# BLACK'S LAW DICTIONARY

Definitions of the Terms and Phrases of
American and English Jurisprudence,
Ancient and Modern

By

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Bankruptcy, Mortgages, Constitutional Law, Interpretation
of Laws, Rescission and Cancellation of Contracts, Etc.

REVISED FOURTH EDITION

BY

THE PUBLISHER'S EDITORIAL STAFF

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# PREFACE
# REVISED FOURTH EDITION

THE sustained and growing popularity of BLACK'S LAW DICTIONARY since its appearance more than seventy five years ago is a striking tribute to the scholarship and learning of Henry Campbell Black, and to the essential soundness of the plan adopted by him for the compilation of a legal lexicon.

In accordance with the original plan of this work, consistently adhered to in all subsequent editions, the law student, confronted in his casebooks with reports from the Year Books, or with extracts from Glanvil, Bracton, Littleton, or Coke, will find in this dictionary an unusually complete collection of definitions of terms used in old English, European, and feudal law. The student will also find in this volume, on page 1795, a useful Table of British Regnal Years, listing the sovereigns of England for more than 900 years, together with the date of accession to the throne, and the length of reign.

BLACK'S LAW DICTIONARY has proven its value through the years to the busy practitioner, judge and law student who requires quick and convenient access to the meanings of legal terms and phrases found in statutes or judicial opinions, as well as to the special legal meanings of standard English words—meanings which frequently cannot be found in the ordinary English language dictionaries.

In the period of more than thirty five years since the publication of the Third Edition, the law has undergone substantial changes and developments. The vocabulary of the law has shown corresponding change and growth. A word, in the often quoted dictum of Mr. Justice Holmes, is "the skin of a living thought," and the words of statutes and judicial opinions reflect the contemporary thinking of legislators and jurists. In order adequately to represent this thinking in the fourth edition, a patient examination was made of the thousands of opinions handed down by the appellate courts each year. Some revisions and additions have been included in this Revised Fourth Edition

Abbreviations of common words and phrases likely to be encountered by the user are explained in appropriate places throughout the main body of the work. A Table of Abbreviations of the titles of law reports, textbooks, and other legal literature is contained in the back of the volume and a Guide to Pronunciation is included in the front of the volume.

New features in this Revised Fourth Edition include the following:

Code of Professional Responsibility
Canons of Judicial Ethics
An Outline of the Minimum Requirements for
Admission to Legal Practice in the United States

## PREFACE—REVISED FOURTH EDITION

In order that BLACK'S LAW DICTIONARY should continue to be a handy one-volume work of ready reference, the enlarged contents of the Fourth Edition necessitated an improved typographical style. The type for the Fourth Edition was accordingly completely reset and arranged in wider columns, in a more attractive and readable manner.

The Publisher has drawn freely on its wide experience to make the present edition of BLACK'S LAW DICTIONARY superior to any of the earlier editions. It is confidently believed that this edition, both in content and format, sets new standards of excellence among law dictionaries.

THE PUBLISHER

ST. PAUL, MINN.
June, 1968

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# GUIDE TO PRONUNCIATION

## A NOTE ON PRONUNCIATION OF LATIN

One of the difficulties in pronouncing legal terms is that one commonly hears both the English system and the Roman system of pronouncing Latin words. Before 1900, the English pronunciation of Latin had developed for legal, medical, and other scientific terms. During the second half of the nineteenth century, scholars established that what is now known as the Roman pronunciation was used between 50 B.C. and 50 A.D. Nearly all schools in English-speaking countries adopted the Roman system of pronunciation. But by and large, the English pronunciation has persisted among lawyers, physicians, and scientists.

The main difference between the Roman and the English pronunciation of Latin is in the long sounds of a, e, and i. In English these sounds are a, ë, and I; in Roman, a is a; e is a; and i is -6.

The dominant usage among lawyers today is probably the English pronunciation, but the Roman system taught in the schools still has its influence. Lawyers who studied Latin in school often tend toward the Roman, and others often tend toward the English. Yet nearly all use both systems, or variations from both systems, to some extent.

For instance, many lawyers use the English pronunciation, réz jō͞O'di-kalia, but many lawyers prefer to say raz
is neither English nor Roman but a mixture. The Roman ras yOrYdl-ca-ta is seldom if ever heard. Probably all lawyers use the English ha'be-as corpus or ha'bèz corpus; a lawyer who tries to get his client out of jail by asking for a writ of ha'bd-as corpus might not be understood. Yet the prevailing practice is probably to use the Roman d-më'cils cure-I, and not the English d-mi'cils cferi-ë. One usually hears the mixture, sine qua non; one seldom if ever hears the English One qua non.

The following list is devoted mostly but not altogether to Latin words. For those words the English pronunciation is always in first place, followed by the Roman or a variation of the Roman whenever it is known to be widely used. The English pronunciation is never incorrect in the view of lexicographers, although local or general usage may often cause some lawyers to prefer a pronunciation other than the English. As the study of Latin in the schools declines still further, the English pronunciation is likely to continue to increase.

If a uniform system is ever achieved, it is much more likely to be the English than the Roman.

## KEY TO PRONUNCIATION

Make; chaotic; care; cat; art; across; eat; evade; ebb; runner; ice; hit; oak; Obey; Order; hot; food; foot; Unit; unite; Urge; up; N (French nasal, as in ensemble, aN saN'b1).

---

| | |
|---|---|
| a fortiori | a fOr'shi-O'ri |
| a mensa et thoro | a men'sd et thO'rel |
| a priori | a pri-O'ri, pri-O'ri; d' pri-ore |
| ab inconvenienti | ab in'cOn-ve'n1-en'ti |
| ab initio | ab |
| actio in rem | ak'shi-O in rem |
| ad idem | ad i'dem |
| affiant | a-firant |
| agister | d-fisler |
| aleatory | a'16-a-tO'ff; -ter-I |
| aliquot | al'i-kwOt |
| ambulatory | |
| amicus curiae | a-mi'kfis kteri-e; a-me'cUs |
| animo revertendi | rev'er-ten'di |
| animo testamenti | an'i-mO tesla-men't1 |
| appellant | a-pel'ant |
| appellate | |
| appellee | ap'e-le' |
| assignee | |
| autre vie, pur | poor Ot're ve |
| bona fides | bO'nd fi'dez |
| bona vacantia | bO'na |
| capias | ka'pi-as; kap'i-as |
| casus belli | ka'sfis bell* |
| casus foederis | ka'stis fed'er-is |
| casus fortuitus | for-tfti-tils |
| casus omissus | |
| causa causans | kO'zänz; kou'zd kou'zdnz |
| causa mortis | kO'za mortis; kou'zd mOr'tis |
| causa sine qua ncn | kO'zd sine kwa nOn'; kou'zà, sine kwd nOn |
| caveat emptor | ka've-at emp'tOr; kä've-at |
| certiorari | sfir'shi-O-rarl; |
| cestui que trust | set'i ka trust |
| chose | shOz |

| | |
|---|---|
| codicil | keid'i-s11 |
| consortium | kein-sOeshi-um |
| contra bonos mores | kein'tra 13ª5'nOs mO'rez |
| coram nobis | IcO'ram |
| corpus delicti | |
| corpus juris | Weptls jo—O'ris |
| curtesy | |
| cy-pres | se' pra' |
| damnum absque injuria | ddm'niim abs'kwe in-jeWri-A |
| de bene esse | de Wile es'e |
| de facto | de fdlc'tel |
| de jure | de jOb're |
| de novo | de nO'vO" |
| del credere | del kred'er-e; kre'der-e |
| delegatus non potest delegare | non pa'tést délie-ga!re |
| demesne | de-man', -men' |
| demur | |
| demurrer | de-mileêr |
| descriptio personae | de-skrip'shi-6 per-sO'ne |
| detinue | |
| devise | de-viz' |
| devisee | dév'i-ze'; d0-viz'e' |
| domicile | |
| dominium | |
| donatio mortis causa | do-nd'shi-e5 mortis laza; kou'zd |
| duces tecum | da'ses tê'ktim |
| ejusdem generis | jen'er-is |
| eleemosynary | el'e-e; |
| en ventre sa mere | aN vaN'te sa' mar' |
| enfeoff | en-fer ; en-fer |
| ex gratis | eks gra'shi-a |
| ex parte | eks pa.ete |
| ex post facto | Rs post fak'tO |
| exequatur | ék'se-kwa'tër |
| expressio unius est exclusio alterius | elcs-presh'I-6 ffni-as est eks-klaTi'zhi-ti al-Writ-Us |
| facias | fä.'shi-as |
| (scire facias) | sire fa'shi-ds |
| (fieri facias) | fi'e-ri fa'shi-as |
| falsa demonstratio | demon-strd'slii-E• |
| feme covert | fern kilv'ért |
| feme sole | fern sOl |

| | |
|---|---|
| ferae naturae | fe"r"e na-tiVre |
| force majeure | fors' rrazhile |
| forma pauperis, in | in fOr'md pope-ris |
| functus officio | ffingklas |
| gratis | gratis |
| gravamen | grd-vYmen |
| habeas corpus | hä'be-as ki5eptis; ha.'136z |
| ignorantia juris | Ig'nO-rdn'shi-d jøVris |
| imperium | |
| imprimatur | im'pri-mater; -pri- |
| in esse | in es'è |
| in extremis | in eks-tre'mis |
| in fieri | in fire-ri |
| in futuro | in fil-tferO |
| in limine | in limq-ne |
| in loco parentis | in WM pd-ren'tis |
| in pays | in pa |
| in pari delicto | in pä'ri de-lic't6; |
| in pari materia | in pa'ri ma-tê'ff-d; 0'A |
| in personam | in per-sO'ndm |
| in praesenti | in pre-zèn'ti |
| in re | in re |
| in rem | In rem |
| in toto | in bYtO |
| in transitu | in trän'si-til |
| indebitatus assumpsit | in-debl-täVis, In-dal-M.1as; A-samp'sit, |
| indicia | |
| indictment | In-difment |
| inter partes | inter par'tez |
| inter se | in'ter se' |
| inter vivos | inter |
| intra vires | in'tra vi'rez |
| jura in re | jaYrd in re |
| jus | bus |
| jus accrescendi | jus akTO-sen'di |
| jus civile | jus si-viTe |
| jus gentium | jus jen'shi-um |
| jus naturale | jus närA-rd'le |
| jus tertii | jus |
| lathes | läch'ez |
| lessee | |
| lex domicilii | Mks 1016ml-sing |

| | |
|---|---|
| lex forl | léks |
| lex loci | Mks 16'si |
| lex situs | Mks siVis |
| lien | ré'en; len |
| locus standi | stdn'di |
| mala fides | maga fi'dez; ma'1a |
| mandamus | |
| mare clausum | ma'rê mare klou'zihn |
| mare liberum | mare mare lé'be-ram |
| mens rea | ménz |
| mesne | men; man |
| mutatis mutandis | mu-fan'dis |
| ne exeat republica | ne ek's6-dt re-ptabli-ka |
| nihil est | ni'hil -est |
| nisi prius | ni'si |
| nolle prosequi | nOl'é prOs'e-kwi; prose-kwi |
| non est factum | non est fäletilm |
| non obstante veredicto | nOn Ob-stan'tê vèr'e-dik'tO |
| non sequitur | nOn sèk'wi-ter |
| nudum pactum | paklarn |
| nulla bona | ba'na |
| nunc pro tune | nfingk' pra[t] tangk' |
| obiter dictum | Obri-ter dik'tilm, Ob'i-ter |
| obligatio | 613-11-0.'shi-O |
| obligee | Ob |
| obligor | Ob Obqi-gOr |
| onus probandi | O'nfis pro-bdn'di |
| parens patriae | pa'renz pa'tri-ê, pätrénz |
| pari delicto | pa'ri pätri |
| pari passu | pari pas[s]u; pär'i pas'156 |
| particeps criminis | parli-sops krim'i-nis |
| pendente lite | pen-den' to li'tê |
| persona non grata | per-sO'nd nOn grata |
| plene administravit | plO'nê ad-mini-stra'vit |
| poenitentiae, locus | |
| postea | poste-a |
| praecipe | prês'i-pe; pre'si-pe |
| prima facie | prima fa'shi-ê; fa'sh6 |
| profit a prendre | profit a praN'de |
| pro rata | pro rata; rata |
| publici juris | joTh'ris |
| qua | kwa; kwa |
| quaere | kwê'r6 |

| | |
|---|---|
| quantum meruit | kwOn'tilm mèr'66-It; mer11-it |
| quantum valebat | kwOn'tilm vá-letat |
| quare clausum fregit | kwa're kleezilm fre'fit, |
| quasi | kwa'si; kwa'si |
| qui facit per alium facit per se | kwi fa'sit per d'li-um fd'sit per se |
| quia timet | trmét |
| quo warranto | kwO w15-ran'tO |
| ratio decidendi | ra'shi-O dès'i-dèn'di |
| rebus sic stant:bus | rebus sik |
| renvoi | ren-voi'; raN'vwd |
| res | rez; raz |
| res gestae | rez jes'te; raz Ks'ti |
| res inter alios acta | rez inter ak'td |
| res ipsa loquitur | rez lOk'wi-ter; raz |
| res judicata | rez jōVdi-käftd, raz |
| restitutio in integrum | res'ti-ta'shi-O in in'te-gram |
| sans recours | saN re-koor' |
| scienter | si-e-n'tér |
| scire facias | si're fd'shi-as |
| secus | |
| semble | sernt'l |
| seriatim | serii-d'tim; |
| sine die | dre |
| sine qua non | sine qua non; sine qua non |
| solatium | |
| stare decisis | sta're de-srsis, stare |
| status quo | status kwe• |
| sub judice | sub jaii'di-se |
| subpoena | sii-pe'nd |
| subpoena duces tecum | sti-pe'nd; te'kiim |
| suggestio falsi | farsi |
| sui generic | sfei jen'ér-is |
| sui juris | saʳi jo-O'ris |
| supersedeas | super-se'de-as |
| suppressio yeti | ve'ri |
| tabula rasa | rd'sa |
| ubi jus, ibi remed:um | u'bi jus, i'bI |
| ultra vires | **ultra** vi'rez |
| uxor | |
| venue | ven'a |
| vis major | vis major |
| volenti non fit injuria | vel-lén'ti am fit in-jdO'fi-a |

# CODE OF PROFESSIONAL RESPONSIBILITY *

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# CODE OF PROFESSIONAL RESPONSIBILITY

With amendments to February 24, 1970

## PREAMBLE AND PRELIMINARY STATEMENT

### *Preamble* [1]

The continued existence of a free and democratic society depends upon recognition of the concept that justice is based upon the rule of law grounded in respect for the dignity of the individual and his capacity through reason for enlightened self-government.[2] Law so grounded makes justice possible, for only through such law does the dignity of the individual attain respect and protection. Without it, individual rights become subject to unrestrained power, respect for law is destroyed, and rational self-government is impossible.

Lawyers, as guardians of the law, play a vital role in the preservation of society. The fulfillment of this role requires an understanding by lawyers of their relationship with and function in our legal system.[3] A consequent obligation of lawyers is to maintain the highest standards of ethical conduct.

In fulfilling his professional responsibilities, a lawyer necessarily assumes various roles that require the performance of many difficult tasks. Not every situation which he may encounter can be foreseen,[4] but fundamental ethical principles are always present to guide him. Within the framework of these principles, a lawyer must with courage and foresight be able and ready to shape the body of the law to the ever-changing relationships of society.[5]

The Code of Professional Responsibility points the way to the aspiring and provides standards by which to judge the transgressor. Each lawyer must find within his own conscience the touchstone against which to test the extent to which his actions should rise above minimum standards. But in the last analysis it is the desire for the respect and confidence of the members of his profession and of the society which he serves that should provide to a lawyer the incentive for the highest possible degree of ethical conduct. The possible loss of that respect and confidence is the ultimate sanction. So long as its practitioners are guided by these principles, the law will continue to be a noble profession. This is its greatness and its strength, which permit of no compromise.

### *Preliminary Statement*

In furtherance of the principles stated in the Preamble, the American Bar Association has promulgated this Code of Professional Responsibility, consisting of three separate but interrelated parts: Canons, Ethical Considerations, and Disciplinary Rules.[6] The Code is designed to be adopted by appropriate agencies both as an inspirational guide to the members of the profession and as a basis for disciplinary action when the conduct of a lawyer falls below the required minimum standards stated in the Disciplinary Rules.

Obviously the Canons, Ethical Considerations, and Disciplinary Rules cannot apply to non-lawyers; however, they do define the type of ethical conduct that the public has a right to expect not

[1] The footnotes are intended merely to enable the reader to relate the provisions of this Code to the ABA Canons of Professional Ethics adopted in 1908, as amended, the Opinions of the ABA Committee on Professional Ethics, and a limited number of other sources; they are not intended to be an annotation of the views taken by the ABA Special Committee on Evaluation of Ethical Standards. Footnotes citing ABA Canons refer to the ABA Canons of Professional Ethics, adopted in 1908, as amended.

[2] *Cf.* ABA Canons, Preamble.

[3] "[T]he lawyer stands today in special need of a clear understanding of his obligations and of the vital connection between those obligations and the role his profession plays in society." *Professional Responsibility: Report of the Joint Conference,* 44 A.B.A.J. 1159, 1160 (1958).

[4] "No general statement of the responsibilities of the legal profession can encompass all the situations in which the lawyer may be placed. Each position held by him makes its own peculiar demands. These demands the lawyer must clarify for himself in the light of the particular role in which he serves." *Professional Responsibility: Report of the Joint Conference,* 44 A.B.A.J. 1159, 1218 (1958).

[5] "The law and its institutions change as social conditions change. They must change if they are to preserve, much less advance, the political and social values from which they derive their purposes and their life. This is true of the most important of legal institutions, the profession of law. The profession, too, must change when conditions change in order to preserve and advance the social values that are its reasons for being." Cheatham, *Availability of Legal Services: The Responsibility of the Individual Lawyer and the Organized Bar,* 12 U.C.L.A.L. Rev. 438, 440 (1965).

[6] The Supreme Court of Wisconsin adopted a Code of Judicial Ethics in 1967. "The code is divided into standards and rules, the standards being statements of what the general desirable level of conduct should be, the rules being particular canons, the violation of which shall subject an individual judge to sanctions." In re Promulgation of a Code of Judicial Ethics, 36 Wis.2d 252, 255, 153 N.W. 2d 873, 874 (1967).

The portion of the Wisconsin Code of Judicial Ethics entitled "Standards" states that "[t]he following standards set forth the significant qualities of the ideal judge . . . ." *Id.,* 36 Wis.2d at 256, 153 N.W.2d at 875. The portion entitled "Rules" states that "[t]he court promulgates the following rules because the requirements of Judi-

only of lawyers but also of their non-professional employees and associates in all matters pertaining to professional employment. A lawyer should ultimately be responsible for the conduct of his employees and associates in the course of the professional representation of the client.

The Canons are statements of axiomatic norms, expressing in general terms the standards of professional conduct expected of lawyers in their relationships with the public, with the legal system, and with the legal profession. They embody the general concepts from which the Ethical Considerations and the Disciplinary Rules are derived.

The Ethical Considerations are aspirational in character and represent the objectives toward which every member of the profession should strive. They constitute a body of principles upon which the lawyer can rely for guidance in many specific situations.[7]

The Disciplinary Rules, unlike the Ethical Considerations, are mandatory in character. The Disciplinary Rules state the minimum level of conduct below which no lawyer can fall without being subject to disciplinary action. Within the framework of fair trial,[8] the Disciplinary Rules should be uniformly applied to all lawyers,[9] regardless of the nature of their professional activities.[10] The Code makes no attempt to prescribe either disciplinary procedures or penalties[11] for violation of a Disciplinary Rule,[12] nor does it undertake to define standards for civil liability of lawyers for professional conduct. The severity of judgment against one found guilty of violating a Disciplinary Rule should be determined by the character of the offense and the attendant circumstances.[13] An enforcing agency, in applying the Disciplinary Rules, may find interpretive guidance in the basic principles embodied in the Canons and in the objectives reflected in the Ethical Considerations.

cial conduct embodied therein are of sufficient gravity to warrant sanctions if they are not obeyed . . . ." *Id.,* 36 Wis.2d at 259, 153 N.W.2d at 876.

[7] "Under the conditions of modern practice it is peculiarly necessary that the lawyer should understand, not merely the established standards of professional conduct, but the reasons underlying these standards. Today the lawyer plays a changing and increasingly varied role. In many developing fields the precise contribution of the legal profession is as yet undefined." *Professional Responsibility: Report of the Joint Conference,* 44 A.B.A.J. 1159 (1958).

"A true sense of professional responsibility must derive from an understanding of the reasons that lie back of specific restraints, such as those embodied in the Canons. The grounds for the lawyer's peculiar obligations are to be found in the nature of his calling. The lawyer who seeks a clear understanding of his duties will be led to reflect on the special services his profession renders to society and the services it might render if its full capacities were realized. When the lawyer fully understands the nature of his office, he will then discern what restraints are necessary to keep that office wholesome and effective." *Id.*

[8] "Disbarment, designed to protect the public, is a punishment or penalty imposed on the lawyer. . . . He is accordingly entitled to procedural due process, which includes fair notice of the charge." In re Ruffalo, 390 U.S. 544, 550, 20 L.Ed.2d 117, 122, 88 S.Ct. 1222, 1226 (1968), *rehearing denied,* 391 U.S. 961, 20 L.Ed.2d 874, 88 S.Ct. 1833 (1968).

"A State cannot exclude a person from the practice of law or from any other occupation in a manner or for reasons that contravene the Due Process or Equal Protection Clause of the Fourteenth Amendment. . . . A State can require high standards of qualification . . . but any qualification must have a rational connection with the applicant's fitness or capacity to practice law." Schware v. Bd. of Bar Examiners, 353 U.S. 232, 239, 1 L.Ed.2d 796, 801-02, 77 S.Ct. 752, 756 (1957).

"[A]n accused lawyer may expect that he will not be condemned out of a capricious self-righteousness or denied the essentials of a fair hearing." Kingsland v. Dorsey, 338 U. S. 318, 320, 94 L. Ed. 123, 126, 70 S.Ct. 123, 124-25 (1949).

"The attorney and counsellor being, by the solemn judicial act of the court, clothed with his office, does not hold it as a matter of grace and favor. The right which it confers upon him to appear for suitors, and to argue causes, is something more than a mere indulgence, revocable at the pleasure of the court, or at the command of the legislature. It is a right of which he can only be deprived by the judgment of the court, for moral or professional delinquency." Ex parte Garland, 71 U.S. (4 Wall.) 333, 378-79, 18 L. Ed. 366, 370 (1866).

*See generally* Comment, *Procedural Due Process and Character Hearings for Bar Applicants,* 15 Stan.L.Rev. 500 (1963).

[9] "The canons of professional ethics must be enforced by the Courts and must be respected by members of the Bar if we are to maintain public confidence in the integrity and impartiality of the administration of justice." In re Meeker, 76 N.M. 354, 357, 414 P.2d 862, 864 (1966), *appeal dismissed,* 385 U.S. 449 (1967).

10 See ABA Canon 45.

"The Canons of this Association govern all its members, irrespective of the nature of their practice, and the application of the Canons is not affected by statutes or regulations governing certain activities of lawyers which may prescribe less stringent standards." ABA Comm. on Professional Ethics, *OPINIONS,* No. 203 (1940) [hereinafter each Opinion is cited as *"ABA Opinion"].*

*Cf. ABA Opinion* 152 (1936).

11 "There is generally no prescribed discipline for any particular type of improper conduct. The disciplinary measures taken are discretionary with the courts, which may disbar, suspend, or merely censure the attorney as the nature of the offense and past indicia of character may warrant." Note, 43 Cornell L.Q. 489, 495 (1958).

[12] The Code seeks only to specify conduct for which a lawyer should be disciplined. Recommendations as to the procedures to be used in disciplinary actions and the gravity of disciplinary measures appropriate for violations of the Code are within the jurisdiction of the American Bar Association Special Committee on Evaluation of Disciplinary Enforcement.

[13] "The severity of the judgment of this court should be in proportion to the gravity of the offenses, the moral turpitude involved, and the extent that the defendant's acts and conduct affect his professional qualifications to practice law." Louisiana State Bar Ass'n v. Steiner, 204 La. 1073, 1092-93, 16 So.2d 843, 850 (1944) (Higgins, J., concurring in decree).

"Certainly an erring lawyer who has been disciplined and who having paid the penalty has given satisfactory evidence of repentance and has been rehabilitated and restored to his place at the bar by the court which knows him best ought not to have what amounts to an order of permanent disbarment entered against him by a federal court solely on the basis of an earlier criminal record and without regard to his subsequent rehabilitation and present good character . . .. We think, therefore, that the district court should reconsider the appellant's appli-

## CANON 1

### A Lawyer Should Assist in Maintaining the Integrity and Competence of the Legal Profession

ETHICAL CONSIDERATIONS

EC 1-1 A basic tenet of the professional responsibility of lawyers is that every person in our society should have ready access to the independent professional services of a lawyer of integrity and competence. Maintaining the integrity and improving the competence of the bar to meet the highest standards is the ethical responsibility of every lawyer.

EC 1-2 The public should be protected from those who are not qualified to be lawyers by reason of a deficiency in education [1] or moral standards [2] or of other relevant factors [3] but who nevertheless seek to practice law. To assure the maintenance of high moral and educational standards of the legal profession, lawyers should affirmatively assist courts and other appropriate bodies in promulgating, enforcing, and improving requirements for admission to the bar.[4] In like manner, the bar has a positive obligation to aid in the continued improvement of all phases of pre-admission and post-admission legal education.

EC 1-3 Before recommending an applicant for admission, a lawyer should satisfy himself that the applicant is of good moral character. Although a lawyer should not become a self-appointed investigator or judge of applicants for admission, he should report to proper officials all unfavorable information he possesses relating to the character or other qualifications of an applicant.[5]

EC 1-4 The integrity of the profession can be maintained only if conduct of lawyers in violation of the Disciplinary Rules is brought to the attention of the proper officials. A lawyer should reveal voluntarily to those officials all unprivileged knowledge of conduct of lawyers which he believes clearly to be in violation of the Disciplinary Rules.[6] A lawyer should, upon request, serve on and assist committees and boards having responsibility for the administration of the Disciplinary Rules."[7]

EC 1-5 A lawyer should maintain high standards of professional conduct and should encourage fellow lawyers to do likewise. He should be temperate and dignified, and he should refrain from all

cation for admission and grant it unless the court finds it to be a fact that the appellant is not presently of good moral or professional character." In re Dreier, 258 F.2d 68, 69-70 (3d Cir. 1958).

1 "[W]e cannot conclude that all educational restrictions [on bar admission] are unlawful. We assume that few would deny that a grammar school education requirement, before taking the bar examination, was reasonable. Or that an applicant had to be able to read or write. Once we conclude that *some* restriction is proper, then it becomes a matter of degree—the problem of drawing the line.

"We conclude the fundamental question here is whether Rule IV, Section 6 of the Rules Pertaining to Admission of Applicants to the State Bar of Arizona is 'arbitrary, capricious and unreasonable.' We conclude an educational requirement of graduation from an accredited law school is not." Hackin v. Lockwood, 361 F.2d 499, 503-04 (9th Cir. 1966), *cert. denied,* 385 U.S. 960, 17 L.Ed.2d 305, 87 S.Ct. 396 (1966).

2 "Every state in the United States, as a prerequisite for admission to the practice of law, requires that applicants possess 'good moral character.' Although the requirement is of judicial origin, it is now embodied in legislation in most states." Comment, *Procedural Due Process and Character Hearings for Bar Applicants,* 15 Stan.L.Rev. 500 (1963).

"Good character in the members of the bar is essential to the preservation of the integrity of the courts. The duty and power of the court to guard its portals against intrusion by men and women who are mentally and morally dishonest, unfit because of bad character, evidenced by their course of conduct, to participate in the administrative law, would seem to be unquestioned in the matter of preservation of judicial dignity and integrity." In re Monaghan, 126 Vt. 53, 222 A.2d 665, 670 (1966).

"Fundamentally, the question involved in both situations [i.e. admission and disciplinary proceedings] is the same—is the applicant for admission or the attorney sought to be disciplined a fit and proper person to be permitted to practice law, and that usually turns upon whether he has committed or is likely to continue to commit acts of moral turpitude. At the time of oral argument the attorney for respondent frankly conceded that the test for admission and for discipline is and should be the same. We agree with this concession." Hallinan v. Comm. of Bar Examiners, 65 Cal.2d 447, 453, 421 P.2d 76, 81, 55 Cal. Rptr. 228, 233 (1966).

3 "Proceedings to gain admission to the bar are for the purpose of protecting the public and the courts from the ministrations of persons unfit to practice the profession. Attorneys are officers of the court appointed to assist the court in the administration of justice. Into their hands are committed the property, the liberty and sometimes the lives of their clients. This commitment demands a high degree of intelligence, knowledge of the law, respect for its function in society, sound and faithful judgment and, above all else, integrity of character in private and professional conduct." In re Monaghan, 126 Vt. 53, 222 A.2d 665, 676 (1966) (Holden, C. J., dissenting).

4 "A bar composed of lawyers of good moral character is a worthy objective but it is unnecessary to sacrifice vital freedoms in order to obtain that goal. It is also important both to society and the bar itself that lawyers be unintimidated—free to think, speak, and act as members of an Independent Bar." Konigsberg v. State Bar, 353 U.S. 252, 273, 1 L.Ed.2d 810, 825, 77 S.Ct. 722, 733 (1957).

5 *See* ABA Canon 29.

6 ABA Canon 28 designates certain conduct as unprofessional and then states that : "A duty to the public and to the profession devolves upon every member of the Bar having knowledge of such practices upon the part of any practitioner immediately to inform thereof, to the end that the offender may be disbarred." ABA Canon 29 states a broader admonition : "Lawyers should expose without fear or favor before the proper tribunals corrupt or dishonest conduct in the profession."

7 "It is the obligation of the organized Bar and the individual lawyer to give unstinted cooperation and assistance to the highest court of the state in discharging its function and duty with respect to discipline and in purging the profession of the unworthy." *Report of the Special* Committee *on Disciplinary Procedures,* 80 A.B.A.Rep. 463, 470 (1955).

illegal and morally reprehensible conduct.[8] Because of his position in society, even minor violations of law by a lawyer may tend to lessen public confidence in the legal profession. Obedience to law exemplifies respect for law. To lawyers especially, respect for the law should be more than a platitude.

EC 1-6 An applicant for admission to the bar or a lawyer may be unqualified, temporarily or permanently, for other than moral and educational reasons, such as mental or emotional instability. Lawyers should be diligent in taking steps to see that during a period of disqualification such person is not granted a license or, if licensed, is not permitted to practice.[9] In like manner, when the disqualification has terminated, members of the bar should assist such person in being licensed, or, if licensed, in being restored to his full right to practice.

## DISCIPLINARY RULES

### DR 1-101 Maintaining Integrity and Competence of the Legal Profession.

(A) A lawyer is subject to discipline if he has made a materially false statement in, or if he has deliberately failed to disclose a material fact requested in connection with, his application for admission to the bar.'[10]

(B) A lawyer shall not further the application for admission to the bar of another person known by him to be unqualified in respect to character, education, or other relevant attribute."

### DR 1-102 Misconduct.

(A) A lawyer shall not:

(1) Violate a Disciplinary Rule.

(2) Circumvent a Disciplinary Rule through actions of another.12

(3) Engage in illegal conduct involving moral turpitude.13

[g] *Cf.* ABA Canon 32.

[9] "We decline, on the present record, to disbar Mr. Sherman or to reprimand him—not because we condone his actions, but because, as heretofore indicated, we are concerned with whether he is mentally responsible for what he has done.

"The logic of the situation would seem to dictate the conclusion that, if he was mentally responsible for the conduct we have outlined, he should be disbarred; and, if he was not mentally responsible, he should not be permitted to practice law.

"However, the flaw in the logic is that he may have been mentally irresponsible [at the time of his offensive conduct] . . ., and, yet, have sufficiently improved in the almost two and one-half years intervening to be able to capably and competently represent his clients. .

"We would make clear that we are satisfied that a case has been made against Mr. Sherman, warranting a refusal to permit him to further practice law in this state unless he can establish his mental irresponsibility at the time of the offenses charged. The burden of proof is upon him.

"If he establishes such mental irresponsibility, the burden is then upon him to establish his present capability to practice law." In re Sherman, 58 Wash.2d 1, 6-7, 354 P.2d 888, 890 (1960), *cert. denied.* 371 U.S. 951, 9 L.Ed.2d 499, 83 S.Ct. 506 (1963).

10 "This Court has the inherent power to revoke a license to practice law in this State, where such license was issued by this Court, and its issuance was procured by the fraudulent concealment, or by the false and fraudulent representation by the applicant of a fact which was manifestly material to the issuance of the license." North Carolina ex rel. Attorney General v. Gorson, 209 N.C. 320, 326, 183 S.E. 392, 395 (1936), *cert. denied,* 298 U.S. 662, 80 L.Ed. 1387, 56 S.Ct. 752 (1936).

*See also* Application of Patterson, 318 P.2d 907, 913 (Or. 1957), *cert. denied,* 356 U.S. 947, 2 L.Ed.2d 822, 78 S.Ct. 795 (1958).

[11] *See* ABA Canon 29.

12 In *ABA Opinion* 95 (1933), which held that a municipal attorney could not permit police officers to interview persons with claims against the municipality when the attorney knew the claimants to be represented by counsel, the Committee on Professional Ethics said :

"The law officer is, of course, responsible for the acts of those in his department who are under his supervision and control." *Opinion 85. In re Robinson,* 136 N.Y.S. 548 (affirmed 209 N.Y. 354-1912) held that it was a matter of disbarment for an attorney to adopt a general course of approving the unethical conduct of employees of his client, even though he did not actively participate therein,

". - 'The attorney should not advise or *sanction* acts by his client which he himself should not do.' *Opinion 75."*

13 "The most obvious non-professional ground for disbarment is conviction for a felony. Most states make conviction for a felony grounds for automatic disbarment. Some of these states, including New York, make disbarment mandatory upon conviction for any felony, while others require disbarment only for those felonies which involve moral turpitude. There are strong *arguments* that some felonies, such as involuntary manslaughter, reflect neither on an attorney's fitness, trustworthiness, nor competence and, therefore, should not be grounds for disbarment, but most states tend to disregard these arguments and, following the common law rule, make disbarment mandatory on conviction for any felony." Note, 43 Cornell L.Q. 489, 490 (1958).

"Some states treat conviction for misdemeanors as grounds for automatic disbarment . . .. However, the vast majority, accepting the common law rule, require that the misdemeanor involve moral turpitude. While the definition of moral turpitude may prove difficult, it seems only proper that those minor offenses which do not affect the attorney's fitness to continue in the profession should not be grounds for disbarment. A good example is an assault and battery conviction which would not involve moral turpitude unless done with malice and deliberation." *Id. at 491.*

"The term 'moral turpitude' has been used in the law for centuries. It has been the subject of many decisions by the courts but has never been clearly defined because of the nature of the term. Perhaps the best general definition of the term 'moral turpitude' is that it imports an act of baseness, vileness or depravity in the duties which one person owes to another or to society in general, which is contrary to the usual, accepted and customary rule of right and duty which a person should follow. 58 C.J.S. at page 1201. Although offenses against revenue laws have been held to be crimes of moral turpitude, it has also been held that the attempt to evade the payment of taxes due to the government or any subdivision thereof, while wrong and unlawful, does not involve moral turpitude. 58 C.J.S. at page 1205." Comm. on Legal Ethics v. Scheer, 149 W.Va. 721, 726-27, 143 S.E.2d 141, 145 (1965).

(4) Engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.

(5) *Engage in* conduct that is prejudicial to the administration of justice.

(6) Engage in any other conduct that adversely reflects on his fitness to practice law.[14]

DR 1-103 Disclosure of Information to Authorities.

(A) A lawyer possessing unprivileged knowledge of a violation of DR 1-102 shall report such knowledge to a tribunal or other authority empowered to investigate or act upon such violation.[15]

(B) A lawyer possessing unprivileged knowledge or evidence concerning another lawyer or a judge shall reveal fully such knowledge or evidence upon proper request of a tribunal or other authority empowered to investigate or act upon the conduct of lawyers or judges.[16]

## CANON 2

## A Lawyer Should Assist the Legal Profession in Fulfilling Its Duty to Make Legal Counsel Available

### ETHICAL CONSIDERATIONS

EC 2-1 The need of members of the public for legal services [1] is met only if they recognize their legal problems, appreciate the importance of seeking assistance,[2] and are able to obtain the services of acceptable legal counsel.[3] Hence, important functions of the legal profession are to educate laymen to recognize their legal problems, to facilitate the process of intelligent selection of lawyers, and to assist in making legal services fully available.[4]

*Recognition of Legal Problems*

EC 2-2 The legal profession should assist laymen to recognize legal problems because such problems may not be self-revealing and often are not

"The right and power to discipline an attorney, as one of its officers, is inherent in the court. . . . This power is not limited to those instances of misconduct wherein he has been employed, or has acted, in a professional capacity; but, on the contrary, this power may be exercised where his misconduct outside the scope of his professional relations shows him to be an unfit person to practice law." In re Wilson, 391 S.W.2d 914, 917-18 (Mo. 1965).

[14] "It is a fair characterization of the lawyer's responsibility in our society that he stands 'as a shield,' to quote Devlin, J., in defense of right and to ward off wrong. From a profession charged with these responsibilities there must be exacted those qualities of truth-speaking, of a high sense of honor, of granite discretion, of the strictest observance of fiduciary responsibility, that have, throughout the centuries, been compendiously described as 'moral character' ". Schware v. Bd. of Bar Examiners, 353 U.S. 232, 247 L.Ed.2d 796, 806, 77 S.Ct. 752, 761 (1957) (Frankfurter, J., concurring).

"Particularly applicable here is Rule 4.47 providing that 'A lawyer should always maintain his integrity; and shall not willfully commit any act against the interest of the Public; nor shall he violate his duty to the courts or his clients; nor *shall he,* by any *misconduct, commit any offense against the laws of Missouri or the United States of America, which amounts to a crime involving acts done* by *him contrary to justice, honesty, modesty or good morals;* nor shall he be guilty of any other misconduct whereby, for the protection of the public and those charged with the administration of justice, he should no longer be entrusted with the duties and responsibilities belonging to the office of an attorney.' " In re Wilson, 391 S.W.2d 914, 917 (Mo. 1965).

[15] *See* ABA Canon 29; *cf.* ABA Canon 28.

[16] *Cf.* ABA Canons 28 and 29.

[1] "Men have need for more than a system of law; they have need for a system of law which functions, and that means they have need for lawyers." Cheatham, *The* Lawyer's *Role and Surroundings,* 25 Rocky Mt.L.Rev. 405 (1953).

[2] "Law is not self-applying; men must apply and utilize it in concrete cases. But the ordinary man is incapable. He cannot know the principles of law or the rules guiding the machinery of law administration; he does not know how to formulate his desires with precision and to put them into writing; he is ineffective in the presentation of his claims." Cheatham, *The Lawyer's Role and Surroundings,* 25 Rocky Mt.L.Rev. 405 (1953).

[3] "This need [to provide legal services] was recognized by . . . Mr. [Lewis F.] Powell [Jr., President, American Bar Association, 1963-64], who said: 'Looking at contemporary America realistically, we must admit that despite all our efforts to date (and these have not been insignificant), far too many persons are not able to obtain equal justice under law. This usually results because their poverty or their ignorance has prevented them from obtaining legal counsel.' " Address by E. Clinton Bamberger, Association of American Law Schools 1965 Annual Meeting, Dec. 28, 1965, in Proceedings, Part II, 1965, 61, 63-64 (1965).

"A wide gap separates the need for legal services and its satisfaction, as numerous studies reveal. Looked at from the side of the layman, one reason for the gap is poverty and the consequent inability to pay legal fees. Another set of reasons is ignorance of the need for and the value of legal services, and ignorance of *where* to find a dependable lawyer. There is fear of the mysterious processes and delays of the law, and there is fear of overreaching and overcharging by lawyers, a fear stimulated by the occasional exposure of shysters." Cheatham, *Availability of Legal Services: The Responsibility of the Individual Lawyer and of the Organized Bar,* 12 U.C.L.A.L. Rev. 438 (1965).

[4] "It is not only the right but the duty of the profession as a whole to utilize such methods as may be developed to bring the services of its members to those who need them. so long as this can be done ethically and with dignity." *ABA Opinion* 320 (1968).

"[T]here is a responsibility on the bar to make legal services available to those who need them. The maxim, 'privilege brings responsibilities,' can be expanded to read, exclusive privilege to render public service brings responsibility to assure that the service is available to those in need of it." Cheatham, *Availability of Legal Services: The Responsibility of the Individual Lawyer and of the Organized Bar,* 12 U.C.L.A.L.Rev. 438, 443 (1965).

"The obligation to provide legal services for those actually caught up in litigation carries with it the obligation to make preventive legal advice accessible to all. It is among those unaccustomed to business affairs and fearful of the ways of the law that such advice is often most needed. If it is not received in time, the most valiant and skillful representation in court may come too late." *Professional Responsibility: Report of the Joint Conference,* 44 A.B.A.J. 1159, 1216 (1958).

timely noticed.[5] Therefore, lawyers acting under proper auspices should encourage and participate in educational and public relations programs concerning our legal system with particular reference to legal problems that frequently arise. Such educational programs should be motivated by a desire to benefit the public rather than to obtain publicity or employment for particular lawyers.° Examples of permissible activities include preparation of institutional advertisements [7] and professional articles for lay publications [8] and participation in seminars, lectures, and civic programs. But a lawyer who participates in such activities should shun personal publicity.9

EC 2-3 Whether a lawyer acts properly in volunteering advice to a layman to seek legal services depends upon the circumstances.[10] The giving of advice that one should take legal action could well be in fulfillment of the duty of the legal profession to assist laymen in recognizing legal problems.11 The advice is proper only if motivated by a desire to protect one who does not recognize that he may have legal problems or who is ignorant of his legal rights or obligations. Hence, the advice is improper if motivated by a desire to obtain personal benefit,[12] secure personal publicity, or cause litigation to be brought merely to harass or injure another. Obviously, a lawyer should not contact

[5] "Over a period of years institutional advertising of programs for the benefit of the public have been approved by this and other Ethics Committees as well as by the courts.

"To the same effect are opinions of this Committee : *Opinion 179* dealing with radio programs presenting a situation in which legal advice is suggested in connection with a drafting of a will; *Opinions 205* and 227 permitting institutional advertising of lawyer referral plans; *Opinion 191* holding that advertising by lawyer members of a non-bar associated sponsored plan violated Canon 27. The Illinois Ethics Committee, in its *Opinion 201,* sustained bar association institutional advertising of a check-up plan

"This Committee has passed squarely on the question of the propriety of institutional advertising in connection with a legal check-up plan. Informal Decision C-171 quotes with express approval the Michigan Ethics Committee as follows :

> As a public service, the bar has in the past addressed the public as to the importance of making wills, consulting counsel in connection with real estate transactions, etc. In the same way, the bar, as such, may recommend this program, provided always that it does it in such a way that there is not suggestion of solicitation on behalf of any individual lawyer."

*ABA Opinion* 307 (1962).

[6] "We recognize a distinction between teaching the lay public the importance of securing legal services preventive in character and the solicitation of professional employment by or for a particular lawyer. The former tends to promote the public interest and enhance the public estimation of the profession. The latter is calculated to injure the public and degrade the profession.

"Advertising which is calculated to teach the layman the benefits and advantages of preventive legal services will benefit the lay public and enable the lawyer to render a more desirable and beneficial professional service. . . ." *ABA Opinion* 179 (1938).

[7] "[A bar association] may engage in a dignified institutional educational campaign so long as it does not involve the identification of a particular lawyer with the check-up program. Such educational material may point out the value of the annual check-up and may be printed in newspapers, magazines, pamphlets, and brochures, or produced by means of films, radio, television or other media. The printed materials may be distributed in a dignified way through the offices of persons having close dealings with lawyers as, for example, banks, real estate agents, insurance agents and others. They may be available in lawyers' offices. The bar association may prepare and distribute to lawyers materials and forms for use in the annual legal check-up." *ABA Opinion* 307 (1962).

[8] "A lawyer may with propriety write articles for publications in which he gives information upon the law .." ABA Canon 40.

"The newsletters, by means of which respondents are alleged to have advertised their wares, were sent to the officers of union clients represented by their firm. They contain no reference to any cases handled by the respondents. Their contents are confined to rulings of boards, commissions and courts on problems of interest to labor union, together with proposed and completed legislation important to the Brotherhood, and other items which might affect unions and their members. The respondents cite Opinion 213 of the Committee on Professional Ethics and Grievances as permitting such practice. After studying this opinion, we agree that sending of newsletters of the above type to regular clients does not offend Canon 27." In re Ratner, 194 Kan. 362, 371, 399 P.2d 865, 872-73 (1965).

*Cf. ABA Opinion* 92 (1933).

[9] *Cf. ABA Opinions* 307 (1962) and 179 (1938).

"There is no ethical or other valid reason why an attorney may not write articles on legal subjects *for* magazines and newspapers. The fact that the publication is a trade journal or magazine, makes no difference as to the ethical question involved. On the other hand, it would be unethical and contrary to the precepts of the Canons for the attorney to allow his name to be carried in the magazine or other publication . . . as a free legal adviser for the subscribers to the publication. Such would be contrary to *Canons 27* and *35* and Opinions heretofore announced by the Committee on Professional Ethics and Grievances. (See *Opinions 31,* 41, 42, and 56)." *ABA Opinion* 162 (1936).

[10] *See* ABA Canon 28.

11 This question can assume constitutional dimensions : "We meet at the outset the contention that 'solicitation' is wholly outside the area of freedoms protected by the First Amendment. To this contention there are two answers. The first is that a State cannot foreclose the exercise of constitutional rights by mere labels. The second is that abstract discussion is not the only species of communication which the Constitution protects; the First Amendment also protects vigorous advocacy, certainly of lawful ends, against governmental intrusion. .

"However valid may be Virginia's interest in regulating the traditionally illegal practice of barratry, maintenance and champerty, that interest does not justify the prohibition of the NAACP activities discrosed by this record. Malicious intent was of the essence of the common-law offenses of fomenting or stirring up litigation. And whatever may be or may have been true of suits against governments in other countries, the exercise in our own, as in this case of First Amendment rights to enforce Constitutional rights through litigation, as a matter of law, cannot be deemed malicious." NAACP *v.* Button, 371 U.S. 415, 429, 439-40, 9 L.Ed.2d 405, 415-16, 422, 83 S.Ct. 328, 336, 341 (1963).

[12] *See* ABA Canon 27.

a non-client, directly or indirectly, for the purpose of being retained to represent him for compensation.

EC 2-4 Since motivation is subjective and often difficult to judge, the motives of a lawyer who volunteers advice likely to produce legal controversy may well be suspect if he receives professional employment or other benefits as a result.[13] A lawyer who volunteers advice that one should obtain the services of a lawyer generally should not himself accept employment, compensation, or other benefit in connection with that matter. However, it is not improper for a lawyer to volunteer such advice and render resulting legal services to close friends, relatives, former clients (in regard to matters germane to former employment), and regular clients.14

EC 2-5 A lawyer who writes or speaks for the purpose of educating members of the public to recognize their legal problems should carefully refrain from giving or appearing to give a general solution applicable to all apparently similar individual problems,[15] since slight changes in fact situations may require a material variance in the applicable advice; otherwise, the public may be misled and misadvised. Talks and writings by lawyers for laymen should caution them not to attempt to solve individual problems upon the basis of the information contained therein.10

[13] "The Canons of Professional Ethics of the American Bar Association and the decisions of the courts quite generally prohibit the direct solicitation of business for gain by an attorney either through advertisement or personal communication; and also condemn the procuring of business by indirection through touters of any kind. It is disreputable for an attorney to breed litigation by seeking out those who have claims for personal injuries or other grounds of action in order to secure them as clients, or to employ agents or runners, or to reward those who bring or influence the bringing of business to his office. . . . Moreover, it tends quite easily to the institution of baseless litigation and the manufacture of perjured testimony. From early times, this danger has been recognized in the law by the condemnation of the crime of common barratry, or the stirring up of suits or quarrels between individuals at law or otherwise." In re Ades, 6 F.Supp. 467, 474-75 (D. Mary. 1934).

[14] *"Rule* 2.
"§a. . . .
"[A] member of the State Bar shall not solicit professional employment by
"(1) Volunteering counsel or advice except where ties of blood relationship or trust make it appropriate." Cal. Business and Professions Code § 6076 (West 1962).

[15] *"Rule 18 . . .* A member of the State Bar shall not advise inquirers or render opinions to them through or in connection with a newspaper, radio or other publicity medium of any kind in respect to their specific legal problems, whether or not such attorney shall be compensated for his services." Cal.Business and Professions Code § 6076 (West 1962).

[16] "In any case where a member might well apply the advice given in the opinion to his individual affairs, the lawyer rendering the opinion [concerning problems common to members of an association and distributed to the members through a periodic *bulletin] should* specifically state that this opinion should not be relied on by any member as a basis for handling his individual affairs, but that in every case he should consult his counsel. In the publication of the opinion the association should make a similar statement." *ABA Opinion* 273 (1946).

*Selection of a Lawyer: Generally*

EC 2-6 Formerly a potential client usually knew the reputations of local lawyers for competency and integrity and therefore could select a practitioner in whom he had confidence. This traditional selection process worked well because it was initiated by the client and the choice was an informed one.

EC 2-7 Changed conditions, however, have seriously restricted the effectiveness of the traditional selection process. Often the reputations of lawyers are not sufficiently known to enable laymen to make intelligent choices.[17] The law has become increasingly complex and specialized. Few lawyers are willing and competent to deal with every kind of legal matter, and many laymen have difficulty in determining the competence of lawyers to render different types of legal services. The selection of legal counsel is particularly difficult for transients, persons moving into new areas, persons of limited education or means, and others who have little or no contact with lawyers.18

EC 2-8 Selection of a lawyer by a layman often is the result of the advice and recommendation of third parties—relatives, friends, acquaintances, business associates, or other lawyers. A layman is best served if the recommendation is disinterested and informed. In order that the recommendation be disinterested, a lawyer should not seek to influence another to recommend his employment.10 A lawyer should not compensate another person for recommending him, for influencing a prospective client to employ him, or to encourage future recommendations.20

*Selection of a Lawyer: Professional Notices and Listings*

EC 2-9 The traditional ban against advertising by lawyers, which is subject to certain limited exceptions, is rooted in the public interest. Competitive advertising would encourage extravagant, artful, self-laudatory[21] brashness in seeking business and

[17] "A group of recent interrelated changes bears directly on the availability of legal services. . . . [One] change is the constantly accelerating urbanization of the country and the decline of personal and neighborhood knowledge of whom to retain as a professional man." Cheatham, *Availability of Legal Services: The Responsibility of the Individual Lawyer and of the Organized Bar,* 12 U.C.L.A.L. Rev. 438, 440 (1965).

[18] *Cf.* Cheatham, *A Lawyer When Needed: Legal Services for the Middle Classes,* 63 Colum.L.Rev. 973, 974 (1963).

[19] *See* ABA Canon 27.

[20] *See* ABA Canon 28.

[21] " 'Self-laudation' is a very flexible concept; Canon 27 does not define it, so what course of conduct would be said to constitute it under a given state of facts would no doubt vary as the opinions of men vary. As a famous English judge said, it would vary as the length of the chancellor's foot. It must be in words and tone *that* will 'offend the traditions and lower the tone of our profession.' When it

thus could mislead the layman.[22] Furthermore, it would inevitably produce unrealistic expectations in particular cases and bring about distrust of the law and lawyers.[23] Thus, public confidence in our legal system would be impaired by such advertisements of professional services. The attorney-client relationship is personal and unique and should not be established as the result of pressures and deceptions.[24] History has demonstrated that public confidence in the legal system is best preserved by strict, self-imposed controls over, rather than by unlimited, advertising.

does this, it is 'reprehensible.' This seems to be the test by which 'self-laudation' is measured." State v. Nichols, 151 So.2d 257, 259 (Fla. 1963).

[22] "Were it not for the prohibitions of . . . [Canon 27] lawyers could, and no doubt would be forced to, engage competitively in advertising of all kinds in which each would seek to explain to the public why he could serve better and accomplish more than his brothers at the Bar.

"Susceptible as we are to advertising the public would then be encouraged to choose an attorney on the basis of which had the better, more attractive advertising program rather than on his reputation for professional ability.

"This would certainly maim, if not destroy, the dignity and professional status of the Bar of this State." State v. Nichols, 151 So.2d 257, 268 (Fla. 1963) (O'Connell, J., concurring in part and dissenting in part).

[23] *Cf.* ABA Canon 8.

[24] "The prohibition of advertising by lawyers deserves some examination. All agree that advertising by an individual lawyer, if permitted, will detract from the dignity of the profession, but the matter goes deeper than this. Perhaps the most understandable and acceptable additional reasons we have found are stated by one commentator as follows :

" '1. That advertisements, unless kept within narrow limits, like any other form of solicitation, tend to stir up litigation, and such tendency is against the public interest.

" '2. That if there were no restrictions on advertisements, the least capable and least honorable lawyers would be apt to publish the most extravagant and alluring material about themselves, and that the harm which would result would, in large measure, fall on the ignorant and on those least able to afford it.

" '3. That the temptation would be strong to hold out as inducements for employment, assurances of success or of satisfaction to the client, which assurances could not be realized, and that the giving of such assurances would materially increase the temptation to use ill means to secure the end desired by the client.

" 'In other words, the reasons for the rule, and for the conclusion that it is desirable to prohibit advertising entirely, or to limit it within such narrow bounds that it will not admit of abuse, are based on the possibility and probability that this means of publicity, if permitted, will be abused.' Harrison Hewitt in a comment at 15 A.B.A.J. 116 (1929) reproduced in Cheatham, Cases and Materials on the Legal Profession (2d Ed., 1955), p. 525.

"Of course, competition is at the root of the abuses in advertising. If the individual lawyer were permitted to compete with his fellows in publicity through advertising, we have no doubt that Mr. Hewitt's three points, quoted above, would accurately forecast the result." Jacksonville Bar Ass'n v. Wilson, 102 So.2d 292, 294-95 (Fla. 1958).

EC 2-10 Methods of advertising that are subject to the objections stated above [25] should be and are prohibited.[26] However, the Disciplinary Rules recognize the value of giving assistance in the selection process through forms of advertising that furnish identification of a lawyer while avoiding such objections. For example, a lawyer may be identified in the classified section of the telephone directory,[27] in the office building directory, and on his letterhead and professional card.[28] But at all times the permitted notices should be dignified and accurate.

EC 2-11 The name under which a lawyer conducts his practice may be a factor in the selection process.[29] The use of a trade name or an assumed name could mislead laymen concerning the identity, responsibility, and status of those practicing thereunder.[30] Accordingly, a lawyer in private practice should practice only under his own name, the name of a lawyer employing him, a partnership name composed of the name of one or more of the lawyers practicing in a partnership, or, if permitted by law, in the name of a professional legal corporation, which should be clearly designated as such. For many years some law firms have used a firm name retaining one or more names of deceased or retired partners and such practice is not improper if the firm is a bona fide successor of a firm in which the deceased or retired person was a member, if the use of the name is authorized by law or by contract, and if the public is not misled thereby.[31] However, the name of a partner

[25] *See* ABA Canon 27.

[26] *Cf. ABA Opinions* 309 (1963) and 284 (1951).

[27] *Cf. ABA Opinions* 313 (1964) and 284 (1951).

[28] *See* ABA Canon 27.

[29] *Cf. ABA Opinion* 303 (1961).

[30] *See* ABA Canon 33.

[31] *Id.*

"The continued use of a firm name by one or more surviving partners after the death of a member of the firm whose name is in the firm title is expressly permitted by the Canons of Ethics. The reason for this is that all of the partners have by their joint and several efforts over a period of years contributed to the good will attached to the firm name. In the case of a firm having widespread connections, this good will is disturbed by a change in firm name every time a name partner dies, and that reflects a loss in some degree of the good will to the building up of which the surviving partners have contributed their time, skill and labor through a period of years. To avoid this loss the firm name is continued, and to meet the requirements of the Canon the individuals constituting the firm from time to time are listed." *ABA Opinion* 267 (1945).

"Accepted local custom in New York recognizes that the name of a law firm does not necessarily identify the individual members of the firm, and hence the continued use of a firm name after the death of one or more partners is not a deception and is permissible. . . . The continued use of a deceased partner's name in the firm title is not affected by the fact that another partner withdraws from the firm and his name is dropped, or the name of the new partner is added to the firm name." *Opinion* No. 45, Committee on Professional Ethics, New York *State Bar Assn,* 39 N. Y. St. B. J. 455 (1967) .

*Cf. ABA Opinion* 258 (1943).

who withdraws from a firm but continues to practice law should be omitted from the firm name in order to avoid misleading the public.

EC 2-12 A lawyer occupy:ng a judicial, legislative, or public executive or administrative position who has the right to practice law concurrently may allow his name to remain in the name of the firm if he actively continues to practice law as a member thereof. Otherwise, his name should be removed from the firm name, [32] and he should not be identified as a past or present member of the firm; and he should not hold himself out as being a practicing lawyer.

EC 2-13 In order to avoid the possibility of misleading persons with whom he deals, a lawyer should be scrupulous in the representation of his professional status. [33] He should not hold himself out as being a partner or associate of a law firm if he is not one in fact, [34] and thus should not hold himself out as a partner or associate if he only shares offices with another lawyer.35

EC 2-14 In some instances a lawyer confines his practice to a particular field of law. [36] In the absence of state controls to insure the existence of special competence, a lawyer should not be permitted to hold himself out as a specialist [37] or as having special training or ability, other than in the historically excepted fields of admiralty, trademark, and patent law.38

[32] *Cf.* ABA Canon 33 and *ABA Opinion* 315 (1965).

[33] *Cf. ABA Opinions* 283 (1950) and 81 (1932).

[34] *See ABA Opinion* 316 (1967).

[35] "The word 'associates' has a variety of meanings. Principally through custom the word when used on the letterheads of law firms has come to be regarded as describing those who are employees of the firm. Because the word has acquired this special significance in connection with the practice of the law the use of the word to describe lawyer relationships other than employer-employee is likely to be misleading." In re Sussman and Tanner, 241 Ore. 246, 248, 405 P.2d 355, 356 (1965).

According to *ABA Opinion* 310 (1963), use of the term "associates" would be misleading in two situations ; (1) where two lawyers are partners and they share both responsibility and liability for the partnership ; and (2) where two lawyers practice separately, sharing no responsibility or liability, and only share a suite of offices and some costs.

[36] "For a long time, many lawyers have, of necessity, limited their practice to certain branches of law. The increasing complexity of the law and the demand of the public for more expertness on the part of the lawyer has, in the past few years—particularly in the last ten years—brought about specialization on an increasing scale." *Report of the Special Committee on Specialization and Specialized Legal Services,* 79 A.B.A.Rep. 582, 584 (1954).

[37] "In varying degrees specialization has become the *modus operandi* throughout the legal profession. . . . American society is specialization conscious. The present Canons, however, do not allow lawyers to make known to the lay public the fact that they engage in the practice of a specialty. . . ." Tucker, *The Large Law Firm: Considerations Concerning the Modernization of the Canons of Professional Ethics,* 1965 Wis.L.Rev. 344, 348-49 (1965).

[38] *See* ABA Canon 27.

EC 2-15 The legal profession has developed lawyer referral systems designed to aid individuals who are able to pay fees but need assistance in locating lawyers competent to handle their particular problems. Use of a lawyer referral system enables a layman to avoid an uninformed selection of a lawyer because such a system makes possible the employment of competent lawyers who have indicated an interest in the subject matter involved. Lawyers should support the principle of lawyer referral systems and should encourage the evolution of other ethical plans which aid in the selection of qualified counsel.

*Financial Ability to Employ Counsel: Generally*

EC 2-16 The legal profession cannot remain a viable force in fulfilling its role in our society unless its members receive adequate compensation for services rendered, and reasonable fees [39] should be charged in appropriate cases to clients able to pay them. Nevertheless, persons unable to pay all or a portion of a reasonable fee should be able to obtain necessary legal services, [40] and lawyers should support and participate in ethical activities designed to achieve that objective.41

*Financial Ability to Employ Counsel: Persons Able to Pay Reasonable Fees*

EC 2-17 The determination of a proper fee requires consideration of the interests of both client and lawyers. [42] A lawyer should not charge more than a reasonable fee, [43] for excessive cost of legal service would deter laymen from utilizing the legal system in protection of their rights. Furthermore, an excessive charge abuses the professional relationship between lawyer and client. On the other hand, adequate compensation is necessary in order to enable the lawyer to serve his client effectively and to preserve the integrity and independence of the profession.44

EC 2-18 The determination of the reasonableness of a fee requires consideration of all relevant circumstances, [45] including those stated in the Disciplinary Rules. The fees of a lawyer will vary according to many factors, including the time required, his experience, ability, and reputation, the

[39] *See* ABA Canon 12.

[40] *Cf.* ABA Canon 12.

[41] "If there is any fundamental proposition of government on which all would agree, it is that one of the highest goals of society must be to achieve and maintain equality before the law. Yet this ideal remains an empty form of words unless the legal profession is ready to provide adequate representation for those unable to pay the usual fees." *Professional Representation: Report of the Joint Conference,* 44 A.B.A.J. 1159, 1216 (1958).

[42] *See* ABA Canon 12.

[43] *Cf.* ABA Canon 12.

[44] "When members of the Bar are induced to render legal services for inadequate compensation, as a consequence the quality of the service rendered may be lowered, the welfare of the profession injured and the administration of justice made less efficient." *ABA Opinion* 302 (1961).
*Cf. ABA Opinion* 307 (1962).

[45] *See* ABA Canon 12.

nature of the employment, the responsibility involved, and the results obtained. Suggested fee schedules and economic reports of state and local bar associations provide some guidance on the subject of reasonable fees.[46] It is a commendable and long-standing tradition of the bar that special consideration is given in the fixing of any fee for services rendered a brother lawyer or a member of his immediate family.

EC 2-19 As soon as feasible after a lawyer has been employed, it is desirable that he reach a clear agreement with his client as to the basis of the fee charges to be made. Such a course will not only prevent later misunderstanding but will also work for good relations between the lawyer and the client. It is usually beneficial to reduce to writing the understanding of the parties regarding the fee, particularly when it is contingent. A lawyer should be mindful that many persons who desire to employ him may have had little or no experience with fee charges of lawyers, and for this reason he should explain fully to such persons the reasons for the particular fee arrangement he proposes.

EC 2-20 Contingent fee arrangements[47] in civil cases have long been commonly accepted in the United States in proceedings to enforce claims. The historical bases of their acceptance are that (1) they often, and in a variety of circumstances, provide the only practical means by which one having a claim against another can economically afford, finance, and obtain the services of a competent lawyer to prosecute his claim, and (2) a successful prosecution of the claim produces a *res* out of which the fee can be paid.[48] Although a lawyer generally should decline to accept employment on a contingent fee basis by one who is able to pay a reasonable fixed fee, it is not necessarily improper for a lawyer, where justified by the particular circumstances of a case, to enter into a contingent fee contract in a civil case with any client who, after being fully informed of all relevant factors, desires that arrangement. Because of the human relationships involved and the unique character of the proceedings, contingent fee arrangements in domestic relation cases are rarely justified. In administrative agency proceedings contingent fee contracts should be governed by the same considerations as in other civil cases. Public policy properly condemns contingent fee arrangements in criminal cases, largely on the ground that legal services in criminal cases do not produce a *res* with which to pay the fee.

EC 2-21 A lawyer should not accept compensation or any thing of value incident to his employment or services from one other than his client without the knowledge and consent of his client after full disclosure.[49]

EC 2-22 Without the consent of his client, a lawyer should not associate in a particular matter another lawyer outside his firm. A fee may properly be divided between lawyers[50] properly associated if the division is in proportion to the services performed and the responsibility assumed by each lawyer[51] and if the total fee is reasonable.

EC 2-23 A lawyer should be zealous in his efforts to avoid controversies over fees with clients[52] and should attempt to resolve amicably any differences on the subject.[53] He should not sue a client for a fee unless necessary to prevent fraud or gross imposition by the client.[54]

[48] *Id.*

"[U]nder . . . *[Canon 12],* this Committee has consistently held that minimum fee schedules can only be suggested or recommended and cannot be made obligatory . . ." *ABA Opinion* 302 (1961).

"[A] compulsory minimum fee schedule is contrary to Canon *12* and repeated pronouncements of this committee." *ABA* Opinion 190 (1939).

*Cf. ABA Opinions* 171 (1937) and 28 (1930).

[47] See ABA Canon 13; *see also* Mackinnon, Contingent Fees for Legal Services (1964) (A report of the American Bar Foundation).

"A contract for a reasonable contingent fee where sanctioned by law is permitted by Canon *13,* but the client must remain responsible to the lawyer for expenses advanced by the latter. `There is to be no barter of the privilege of prosecuting a cause for gain in exchange for the promise of the attorney to prosecute at his own expense.' (Cardozo, C. J. in Matter of Gilman, 251 N.Y. 265, 270-271.)" *ABA Opinion* 246 (1942).

[48] *See* Comment, *Providing Legal Services for the Middle Class in Civil Matters: The Problem, the Duty and a Solution,* 26 U.Pitt.L.Rev. 811, 829 (1965).

[49] *See* ABA Canon 38.

"Of course, as . . . [Informal Opinion 679] points out, there must be full disclosure of the arrangement [that an entity other than the client pays the attorney's fee] by the attorney to the client . . ." *ABA Opinion* 320 (1968).

[50] "Only lawyers may share in . . . a division of fees, but . . . it is not necessary that both lawyers be admitted to practice in the same state, so long *as the* division was based on the division of services or responsibility." *ABA Opinion* 316 (1967).

[51] *See* ABA Canon 34.

"We adhere to our previous rulings that where a lawyer merely brings about the employment of another lawyer *but renders no service and assumes no responsibility in the matter,* a division of the latter's fee is improper. *(Opinions 18 and 153).*

"It is assumed that the bar, generally, understands what acts or conduct of a lawyer may constitute 'services' to a client within the intendment of Canon *12.* Such acts or conduct invariably, if not always, involve 'responsibility' on the part of the lawyer, whether the word `responsibility' be construed to denote the possible resultant legal or moral liability on the part of the lawyer to the client or to others, or the onus of deciding what should or should not be done in behalf of the client. The word 'services' in Canon *12* must be construed in this broad sense and may apply to the selection and retainer of associate counsel as well as to other acts or conduct in the client's behalf." *ABA Opinion* 204 (1940).

[52] *See* ABA Canon 14.

[53] *Cf. ABA Opinion* 320 (1968).

[54] *See* ABA Canon 14.

"Ours is a learned profession, not a mere money-getting trade. . . . Suits to collect fees should be *avoided.* Only where the circumstances imperatively require, should resort be had to a suit to compel payment. And where a lawyer does resort to a suit to enforce payment of fees

*Financial Ability to Employ Counsel: Persons Unable to Pay Reasonable Fees*

EC 2-24 A layman whose financial ability is not sufficient to permit payment of any fee cannot obtain legal services, other than in cases where a contingent fee is appropriate, unless the services are provided for him. Even a person of moderate means may be unable to pay a reasonable fee which is large because of the complexity, novelty, or difficulty of the problem or similar factors.[55]

EC 2-25 Historically, the need for legal services of those unable to pay reasonable fees has been met in part by lawyers who donated their services or accepted court appointments on behalf of such individuals. The basic responsibility for providing legal services for those unable to pay ultimately rests upon the individual lawyer, and personal involvement in the problems of the disadvantaged can be one of the most rewarding experiences in the life of a lawyer. Every lawyer, regardless of professional prominence or professional workload, should find time to participate in serving the disadvantaged. The rendition of free legal services to those unable to pay reasonable fees continues to be an obligation of each lawyer, but the efforts of individual lawyers are often not enough to meet the need.[56] Thus it has been necessary for the profession to institute additional programs to provide legal services.[57] Accordingly, legal aid offices,[58] lawyer referral services,[59] and other related programs have been developed, and others will be developed, by the profession.[60] Every lawyer should support all proper efforts to meet this need for legal services.[61]

which involves a disclosure, he should carefully avoid any disclosure not clearly necessary to obtaining or defending his rights." *ABA Opinion* 250 (1943).

*But cf. ABA Opinion* 320 (1968).

[55] "As a society increases in size, sophistication and technology, the body of laws which is required to control that society also increases in size, scope and complexity. With this growth, the law directly affects more and more facets of individual behavior, creating an expanding need for legal services on the part of the individual members of the society. . . . As legal guidance in social and commercial behavior increasingly becomes necessary, there will come a concurrent demand from the layman that such guidance be made available to him. This demand will not come from those who are able to employ the best of legal talent, nor from those who can obtain legal assistance at little or no cost. It will come from the large 'forgotten middle income class,' who can neither afford to pay proportionately large fees nor qualify for ultra-low-cost services. The legal profession must recognize this inevitable demand and consider methods whereby it can be satisfied. If the profession fails to provide such methods, the laity will." Comment, *Providing Legal Services for the Middle Class in Civil Matters: The Problem, the Duty and a Solution,* 26 U.Pitt.L.Rev. 811, 811-12 (1965).

"The issue is not whether we shall do something or do nothing. The demand for ordinary everyday legal justice is so great and the moral nature of the demand is so strong that the issue has become whether we devise, maintain, and support suitable agencies able to satisfy the demand or, by our own default, force the government to take over the job, supplant us, and ultimately dominate us." Smith, *Legal Service Offices for Persons of Moderate Means,* 1949 Wis.L.Rev. 416, 418 (1949).

[56] "Lawyers have peculiar responsibilities for the just administration of the law, and these responsibilities include providing advice and representation for needy persons. To a degree not always appreciated by the public at large, the bar has performed these obligations with zeal and devotion. The Committee is persuaded, however, that a system of justice that attempts, in mid-twentieth century America, to meet the needs of the financially incapacitated accused through primary or exclusive reliance on the uncompensated services of counsel will prove unsuccessful and inadequate. . . . A system of adequate representation, therefore, should be structured and financed in a manner reflecting its public importance. . . . We believe that fees for private appointed counsel should be set by the court within maximum limits established by the statute." Report of the Att'y Gen's Comm. on Poverty and the Administration of Criminal Justice 41-43 (1963).

[57] "At present this representation [of those unable to pay usual fees] is being supplied in some measure through the spontaneous generosity of individual lawyers, through legal aid societies, and—increasingly--through the organized efforts of the Bar. If those who stand in need of this service know of its availability and their need is in fact adequately met, the precise mechanism by which this service is provided becomes of secondary importance. It is of great importance, however, that both the impulse to render this service, and the plan for making that impulse effective, should arise within the legal profession itself." *Professional Responsibility: Report of the Joint Conference,* 44 A.B.A.J. 1159, 1216 (1958).

[58] "Free legal clinics carried on by the organized bar are not ethically objectionable. On the contrary, they serve a very worthwhile purpose and should be encouraged." *ABA Opinion* 191 (1939).

[59] "We are of the opinion that the [lawyer referral] plan here presented does not fall within the inhibition of the Canon. No solicitation for a particular lawyer is involved. The dominant purpose of the plan is to provide as an obligation of the profession competent legal services to persons in low-income groups at fees within their ability to pay. The plan is to be supervised and directed by the local Bar Association. There is to be no advertisement of the names of the lawyers constituting the panel. The general method and purpose of the plan only is to be advertised. Persons seeking the legal services will be directed to members of the panel by the Bar Association. Aside from the filing of the panel with the Bar Association, there is to be no advertisement of the names of the lawyers constituting the panel. If these limitations are observed, we think there is no solicitation of business by or for particular lawyers and no violation of the inhibition of Canon *27." ABA Opinion* 205 (1940).

[60] "Whereas the American Bar Association believes that it is a fundamental duty of the bar to see to it that all persons requiring legal advice be able to attain it, irrespective of their economic status . .

"Resolved, that the Association approves and sponsors the setting up by state and local bar associations of lawyer referral plans and low-cost legal service methods for the purpose of dealing with cases of persons who might not otherwise have the benefit of legal advice . . .." *Proceedings of the House of Delegates of the American Bar Association,* Oct. 30, 1946, 71 A.B.A.Rep. 103, 109-10 (1946).

[61] "The defense of indigent citizens, without compensation, is carried on throughout the country by lawyers representing legal aid societies, not only with the approval, but with the commendation of those acquainted with the work. Not infrequently services are rendered out of sympathy or for other philanthropic reasons, *by* individual lawyers who do not represent legal aid societies. There is nothing whatever in the Canons to prevent a lawyer

*Acceptance and Retention of Employment*

EC 2-26 A lawyer is under no obligation to act as adviser or advocate for every person who may wish to become his client; but in furtherance of the objective of the bar to make legal services fully available, a lawyer should not lightly decline proffered employment. The fulfillment of this objective requires acceptance by a lawyer of his share of tendered employment which may be unattractive both to him and the bar generally.62

EC 2-27 History is replete with instances of distinguished and sacrificial services by lawyers who have represented unpopular clients and causes. Regardless of his personal feelings, a lawyer should not decline representation because a client or a cause is unpopular or community reaction is adverse.63

EC 2-28 The personal preference of a lawyer to avoid adversary alignment against judges, other lawyers,[64] public officials, or influential members of the community does not justify his rejection of tendered employment.

EC 2-29 When a lawyer is appointed by a court or requested by a bar association to undertake representation of a person unable to obtain counsel, whether for financial or other reasons, he should not seek to be excused from undertaking the representation except for compelling reasons.65 Compelling reasons do not include such factors as the repugnance of the subject matter of the proceeding, the identity [66] or position of a person involved in the case, the belief of the lawyer that the defendant in a criminal proceeding is guilty,67 or the belief of the lawyer regarding the merits of the civil case.68

EC 2-30 Employment should not be accepted by a lawyer when he is unable to render competent service [69] or when he knows or it is obvious that the person seeking to employ him desires to institute or maintain an action merely for the purpose of harassing or maliciously injuring another.70 Likewise, a lawyer should decline employment if the intensity of his personal feeling, as distinguished from a community attitude, may impair his effective representation of a prospective client. If a lawyer knows a client has previously obtained counsel, he should not accept *employment* in the matter unless the other counsel approves [71] or withdraws, or the client terminates the prior employment.72

EC 2-31 Full availability of legal counsel requires both that persons be able to obtain counsel and that lawyers who undertake representation complete the work involved. Trial counsel for a convicted defendant should continue to represent his client by advising whether to take an appeal and, if the appeal is prosecuted, by representing him through the appeal unless new counsel is substituted or withdrawal is permitted by the appropriate court.

from performing such an act, nor should there be." *ABA* Opinion 148 (1935).

62 *But cf.* ABA Canon 31.

63 "One of the highest services the lawyer can render to society is to appear in court on behalf of clients whose causes are in disfavor with the general public." *Professional Responsibility: Report of the Joint Conference,* 44 A.B.A.J. 1159, 1216 (1958).

One author proposes the following proposition to be included in "A Proper Oath for Advocates" : "I recognize that it is sometimes difficult for clients with unpopular causes to obtain proper legal representation. I will do all that I can to assure that the client with the unpopular cause is properly represen[t]ed, and that the law[y]er re[p]resenting such a client receives credit from and support of the bar for handling such a matter." Thode, *The Ethical Standard for the Advocate,* 39 Texas L. Rev. 575, 592 (1961).

"§ 6068. . . . It is the duty of an attorney :

"(h) Never to reject, for any consideration personal to himself, the cause of the defenseless or the oppressed." Cal.Business and Professions Code § 6068 (West 1962). Virtually the same language is found in the Oregon statutes at Ore.Rev.Stats. Ch. 9 § 9.460(8).

*See* Rostow, *The Lawyer and His Client,* 48 A.B.A.J. 25 and 146 (1962).

64 *See* ABA Canons 7 and 29.

"We are of the opinion that it is not professionally improper for a lawyer to accept employment to compel another lawyer to honor the just claim of a layman. On the contrary, it is highly proper that he do so. Unfortunately, there appears to be a widespread feeling among laymen that it is difficult, If not impossible, to obtain justice when they have claims against members of the Bar because other lawyers will not accept employment to proceed against them. The honor of the profession, whose members proudly style themselves officers of the court, must surely be sullied if its members bind themselves by custom to refrain from enforcing just claims of laymen against lawyers." *ABA Opinion* 144 (1935).

65 ABA Canon 4 uses a slightly different test, saying, "A lawyer assigned as counsel for an indigent prisoner ought not to ask to be excused for any trivial reason . . .."

66 *Cf.* ABA Canon 7.

67 *See* ABA Canon 5.

68 Dr. Johnson's reply to Boswell upon being asked what he thought of "supporting a cause which you know to be bad" was : "Sir, you do not know it to be good or bad till the Judge determines it. I have said that you are to state facts fairly ; so that your thinking, or what you call knowing, a cause to be bad, must be from reasoning, must be from supposing your arguments to be weak and inconclusive. But, Sir, that is not enough. An argument which does not convince yourself, may convince the Judge to whom you urge it : and if it does convince him, why, then, Sir, you are wrong, and he is right." 2 Boswell, The Life of Johnson 47-48 (Hill ed. 1887).

69 "The lawyer deciding whether to undertake a case must be able to judge objectively whether he is capable of handling it and whether he can assume its burdens without prejudice to previous commitments. . . ." *Professional Responsibility: Report of the Joint Conference,* 44 A.B.A.J. 1158, 1218 (1958).

70 "The lawyer must decline to conduct a civil cause or to make a defense when convinced that it is intended merely to harass or to injure the opposite party or to work oppression or wrong." ABA Canon 30.

71 *See* ABA Canon 7.

72 *Id.*

"From the facts stated we assume that the client has discharged the first attorney and given notice of the discharge. Such being the case, the second attorney may properly accept employment. Canon 7; *Opinions 10, 130, 149." ABA Opinion* 209 (1941).

EC 2-32 A decision by a lawyer to withdraw should be made only on the basis of compelling circumstances [73], and in a matter pending before a tribunal he must comply with the rules of the tribunal regarding withdrawal. A lawyer should not withdraw without considering carefully and endeavoring to minimize the possible adverse effect on the rights of his client and the possibility of prejudice to his client [74] as a result of his withdrawal. Even when he justifiably withdraws, a lawyer should protect the welfare of his client by giving due notice of his withdrawal:[75] suggesting employment of other counsel, delivering to the client all papers and property to which the client is entitled, cooperating with counsel subsequently employed, and otherwise endeavoring to minimize the possibility of harm. Further, he should refund to the client any compensation not earned during the employment:76

## DISCIPLINARY RULES

DR 2-101 Publicity in Genera1.77

(A) A lawyer shall not prepare, cause to be prepared, use, or participate in the use of, any form of public communication that contains professionally self-laudatory statements calculated to attract lay clients; as used herein, "public communication" includes, but is not limited to, communication by means of television, radio, motion picture, newspaper, magazine, or book.

(B) A lawyer shall not publicize himself, his partner, or associate as a lawyer through newspaper or magazine advertisements, radio or television announcements, display advertisements in city or telephone directories, or other means of commercial publicity,[78] nor shall he authorize or permit others to do so in his behalf [79] except as permitted under DR 2-103. This does not prohibit limited and dignified identification of a lawyer as a lawyer as well as by name 99:

(1) In political advertisements when his professional status is germane to the political campaign or to a political issue.

(2) In public notices when the name and profession of a lawyer are required or authorized by law or are reasonably pertinent for a purpose other than the attraction of potential clients.si

(3) In routine reports and announcements of a bona fide business, civic, professional, or political organization in which he serves as a director or officer.

(4) In and on legal documents prepared by him.

(5) In and on legal textbooks, treatises, and other legal publications, and in dignified advertisements thereof.

(C) A lawyer shall not compensate or give any thing of value to representatives of the press, radio, television, or other communication medium in anticipation of or in return for professional publicity in a news item.82

DR 2-102 Professional Notices, Letterheads, Offices, and Law Lists.

(A) A lawyer or law firm shall not use professional cards, professional announcement cards,

[3] *See* ABA Canon 44.

"I will carefully consider, before taking a case, whether it appears that I can fully represent the client within the framework of law. If the decision is in the affirmative, then it will take extreme circumstances to cause me to decide later that I cannot so represent him." Thode, *The Ethical Standard for the Advocate,* 39 Texas L.Rev. 575, 592 (1961) (from "A Proper Oath for Advocates").

[74] *ABA Opinion* 314 (1965) held that a lawyer should not disassociate himself from a cause when "it is obvious that the very act of disassociation would have the effect of violating *Canon 37."*

ABA Canon 44 enumerates instances in which ". . . the lawyer may be warranted in withdrawing on due notice to the client, allowing him time to employ another lawyer."

[76] *See* ABA Canon 44.

[77] *Cf.* ABA Canon 27; *see generally ABA Opinion* 293 (1957).

[78] *cf. ABA Opinions* 133 (1935), 116 (1934), 107 (1934), 73 (1932), 59 (1931), and 43 (1931).

[79] "There can be no justification for the participation and acquiescence by an attorney in the development and publication of an article which, on its face, plainly amounts to a self-interest and unethical presentation of his achievements and capabilities." Matter of Connelly, 18 App.Div. 2d 466, 478, 240 N.Y.S.2d 126, 138 (1963).

"An announcement of the fact that the lawyer had resigned and the name of the person to succeed him, or take over his work, would not be objectionable, either as an official communication to those employed by or connected with the administrative agency or instrumentality [that had employed him], or as a news release.

"But to include therein a statement of the lawyer's experience in and acquaintance with the various departments and agencies of the government, and a laudation of his legal ability, either generally or in a special branch of the law, is not only bad taste but ethically improper.

"It can have but one primary purpose or object ; to aid the lawyer in securing professional employment in private practice by advertising his professional experience, attainments and ability." *ABA Opinion* 184 (1938).

*Cf. ABA Opinions* 285 (1951) and 140 (1935).

[80] "The question is always . . . whether under the circumstance the furtherance of the professional employment of the lawyer is the primary purpose of the advertisement, or is merely a necessary incident of a proper and legitimate objective of the client which does not have the effect of unduly advertising him." *ABA Opinion* 290 (1956).

*See ABA Opinion* 285 (1951).

[31] *See ABA Opinions* 299 (1961), 290 (1956), 158 (1936), and 100 (1933) ; *cf. ABA Opinion* 80 (1932).

[82] *"Rule* 2.

"[A] member of the State Bar shall not solicit professional employment by . .

"(4) The making of gifts to representatives of the press, radio, television or any medium of communication in anticipation of or in return for publicity." Cal.Business and Professions Code § 6076 (West 1962).

office signs, letterheads, telephone directory listings, law lists, legal directory listings, or similar professional notices or devices,[83] except that the following may be used if they are in dignified form:

(1) A professional card of a lawyer identifying him by name and as a lawyer, and *giving* his addresses, telephone numbers, the name of his law firm, and any information permitted under DR 2-105. A professional card of a law firm may also give the names of members and associates. Such cards may be used for identification [84] but may not be published in periodicals, magazines, newspapers,[85] or other media.86

(2) A brief professional announcement card stating new or changed associations or addresses, change of firm name, or similar matters pertaining to the professional office of a lawyer or law firm, which may be mailed to lawyers, clients, former clients, personal friends, and relatives.[87] It shall not state biographical data except to the extent reasonably necessary to identify the lawyer or to explain the change in his association, but it may state the immediate past position of the lawyer.88 It may give the names and dates of predecessor firms in a continuing line of succession. It shall not state the nature of the practice except as permitted under DR 2-105.89

(3) A sign on or near the door of the office and in the building directory identifying the law office. The sign shall not state the nature of the practice, except as permitted under DR 2-105.

(4) A letterhead of a lawyer identifying him by name and as a lawyer, and giving his addresses, telephone numbers, the name of his law firm, associates, and any information permitted under DR 2-105. A letterhead of a law firm may also give the names of members and associates,[90] and names and dates relating to deceased and retired members 9[1] A lawyer may be designated "Of Counsel" on a letterhead if he has a continuing relationship with a lawyer or law firm, other than as a partner or associate. A lawyer or law firm may be designated as "General Counsel" or by similar professional reference on stationery of a client if he or the firm devotes a substantial amount of professional, time in the representation of that client.[92] The letterhead of a law firm may give the names and dates of predecessor firms in a continuing line of succession.

(5) A listing of the office of a lawyer or law firm in the alphabetical and classified sections of the telephone directory or directories for the geographical area or areas in which the lawyer resides or maintains offices or in which a significant part of his clientele resides [93] and in the city directory of the city in which his or the firm's office is located; [94] but the listing may give only the name of the lawyer or law firm, the fact he is a lawyer, addresses, and telephone numbers.[95] The listing shall not be in distinctive form [96] or type.[97] A law firm may have a listing in the firm name separate from that of its members and associates.[98] The listing in the classified section shall not be under a heading or classification other than "Attorneys" or "Lawyers",99

[83] *Cf. ABA Opinions* 233 (1941) and 114 (1934).

[84] *See ABA Opinion* 175 (1938).

[85] *See ABA Opinions* 260 (1944) and 182 (1938).

[86] *But cf. ABA Opinions* 276 (1947) and 256 (1943).

[87] *See ABA Opinion* 301 (1961).

[88] "[I]t has become commonplace for many lawyers to participate in government service ; to deny them the right, upon their return to private practice, to refer to their prior employment in a brief and dignified manner, would place an undue limitation upon a large element of our profession. It is entirely proper for a member of the profession to explain his absence from private practice, where such is the primary purpose of the announcement, by a brief and dignified reference to the prior employment.

di . - . [A]ny such announcement should be limited to the immediate past connection of the lawyer with the government, made upon his leaving that position to enter private practice." *ABA Opinion* 301 (1961).

[89] *See ABA Opinion* 251 (1943).

[90] "Those lawyers who are working for an individual lawyer or a law firm may be designated on the letterhead and in other appropriate places as `associates'." *ABA Opinion* 310 (1963).

[91] *See* ABA Canon 33.

[92] *But see ABA Opinion* 285 (1951).

[93] *See ABA Opinion* 295 (1959).

[94] *But see ABA Opinion* 313 (1964) which says the Committee "approves a listing in the classified section of the city directory for lawyers only when the listing includes all lawyers residing in the community and when no charge is made therefor."

[95] "The listing should consist only of the lawyer's name, address and telephone number." *ABA Opinion* 313 (1964).

[90] "[A]dding to the regular classified listing a 'second line' in which a lawyer claims that he is engaged in a 'specialty' is an undue attempt to make his name distinctive." *ABA Opinion* 284 (1951).

[97] "[Opinion 284] held that a lawyer could not with propriety have his name listed in distinctive type in a telephone directory or city directory. We affirm that opinion." *ABA Opinion* 313 (1964).
*See ABA Opinions* 123 (1934) and 53 (1931).

[98] "[I]f a lawyer is a member of a law firm, both the firm, and the individual lawyer may be listed separately." *ABA Opinion* 313 (1964).

[99] *See ABA Opinion* 284 (1951).

except that additional headings or classifications descriptive of the types of practice referred to in DR 2-105 are permitted.[100]

(6) A listing in a reputable law list [101] or legal directory *giving* brief biographical and other informative data. A law list or directory is not reputable if its management or contents are likely to be misleading or injurious to the public or to the profession.[102] A law list is conclusively established to be reputable if it is certified by the American Bar Association as being in compliance with its rules and standards. The published data may include only the following: name, including name of law firm and names of professional associates; addresses [103] and telephone numbers; one or more fields of law in which the lawyer or law firm concentrates; [104] a statement that practice is limited to one or more fields of law; a statement that the lawyer or law firm specializes in a particular field of law or law practice but only if authorized under DR 2-105 (A) (4) ; [105] date and place of birth; date and place of admission to the bar of state and federal courts; schools attended, with dates of graduation, degrees, and other scholastic distinctions; public or quasi-public offices; military service; posts of honor; legal authorships; legal teaching positions; memberships, offices, committee assignments, and section memberships in bar associations; memberships and offices in legal fraternities and legal societies; technical and professional associations and societies; foreign language ability; names and addresses of references,[106] and, with their consent, names of clients regularly represented.[107]

(B) A lawyer in private practice shall not practice under a trade name, a name that is misleading as to the identity of the lawyer or lawyers practicing under such name, or a firm name containing names other than those of one or more of the lawyers in the firm, except that the name of a professional corporation or professional association may contain "P.C." or "P.A." or similar symbols indicating the nature of the organization, and if otherwise lawful a firm may use as, or continue to include in, its name, the name or names of one or more deceased or retired members of the firm or of a predecessor firm in a continuing line of succession.[108] A lawyer who assumes a judicial, legislative, or public executive or administrative post or office shall not permit his name to remain in the name of a law firm or to be used in professional notices of the firm during any significant period in which he is not actively and regularly practicing law as a member of the firm,[100] and during such period other members of the firm shall not use his name in the firm name or in professional notices of the firm.[110]

[100] *See* Silverman v. State Bar of Texas, 405 F.2d 410, (5th Cir. 1968) ; but *see ABA Opinion* 286 (1952).

[101] *Cf.* ABA Canon 43.

[102] *Cf. ABA Opinion* 255 (1943).

[103] "We are asked to define the word 'addresses' appearing in the second paragraph of Canon 27 . • • •

"It is our opinion that an address (other than a cable address) within the intendment of the canon is that of the lawyer's office or of his residence. Neither address should be misleading. If, for example, an office address is given, it must be that of a bona fide office. The residence address, if given, should be identified as such if the city or other place of residence is not the same as that in which the law office is located." *ABA Opinion* 249 (1942).

[104] "[T]oday in various parts of the country Committees on Professional Ethics of local and state bar associations are authorizing lawyers to describe themselves in announcements to the Bar and in notices in legal periodicals and approved law lists as specialists in a great variety of things. Thus in the approved law lists or professional announcements there appear, in connection with the names of individual practitioners or firms, such designations as 'International Law, Public and Private' ; 'Trial Preparation in Personal Injury and Negligence Actions' ; 'Philippine War Damage Claims' ; 'Anti-Trust' ; 'Domestic Relations' ; 'Tax Law' ; 'Negligence Law'. It would seem that the ABA has given at least its tacit approval to this sort of announcement.

"It is important that this sort of description is not, in New York at least, permitted on letterheads or shingles or elsewhere in communications to laymen. This is subject to the single exception that such announcement to laymen is permitted in the four traditional specialties, Admiralty, Patent, Copyright and Trade-mark." *Report of the Special Committee* on Specialization and *Specialized Legal Education,* 79 A.B.A.Rep. 582, 586 (1954).

[105] This provision is included to conform to action taken by the ABA House of Delegates at the Mid-Winter Meeting, January, 1969.

[106] *See* ABA Canon 43 and *ABA Opinion* 119 (1934) ; *but see ABA Opinion* 236 (1941).

[107] *See* ABA Canon 27.

[108] *See* ABA Canon 33; *cf. ABA Opinions* 318 (1967), 267 (1945), 219 (1941), 208 (1940), 192 (1939), 97 (1933), and 6 (1925).

[109] *ABA Opinion* 318 (1967) held, "anything to the contrary in Formal Opinion 315 or in the other opinions cited notwithstanding" that : "Where a partner whose name appears in the name of a law firm is elected or appointed to high local, state or federal office, which office he intends to occupy only temporarily, at the end of which time he intends to return to his position with the firm, and provided that he is not precluded by holding such office from engaging in the practice of law and does not in fact sever his relationship with the firm but only takes a leave of absence, and provided that there is no local law, statute or custom to the contrary, his name may be retained in the firm name during his term or terms of office, but only if proper precautions are taken not to mislead the public as to his degree of participation in the firm's affairs."

*Cf. ABA Opinion* 143 (1935), New York County Opinion 67, and New York City Opinions 36 and 798; *but cf. ABA Opinion* 192 (1939) and Michigan Opinion 164.

[110] *Cf.* ABA Canon 33.

(C) A lawyer shall not hold himself out as having a partnership with one or more other lawyers unless they are in fact partners.[111]

(D) A partnership shall not be formed or continued between or among lawyers licensed in different jurisdictions unless all enumerations of the members and associates of the firm on its letterhead and in other permissible listings make clear the jurisdictional limitations on those members and associates of the firm not licensed to practice in all listed jurisdictions; [112] however, the same firm name may be used in each jurisdiction.

(E) A lawyer who is engaged both in the practice of law and another profession or business shall not so indicate on his letterhead, office sign, or professional card, nor shall he identify himself as a lawyer in any publication in connection with his other profession or business.

(F) Nothing contained herein shall prohibit a lawyer from using or permitting the use, in connection with his name, of an earned degree or title derived therefrom indicating his training in the law.

DR 2-103 Recommendation of Professional Employment.[113]

(A) A lawyer shall not recommend employment, as a private practitioner, [114] of himself, his partner, or associate to a non-lawyer who has not sought his advice regarding employment of a lawyer.[115]

(B) Except as permitted under DR 2-103(C), a lawyer shall not compensate or give anything of value to a person or organization to recommend or secure his employment [116] by a client, or as a reward for having made a recommendation resulting in his employment [117] by a client.

(C) A lawyer shall not request a person or organization to recommend employment, as a private practitioner, of himself, his partner, or associate, [118] except that he may request referrals from a lawyer referral service operated, sponsored, or approved by a bar association representative of the general bar of the geographical area in which the association exists and may pay its fees incident thereto.[119]

(D) A lawyer shall not knowingly assist a person or organization that recommends, furnishes, or pays for legal services to promote the use of his services or those of his partners or associates. However, he may cooperate in a dignified manner with the legal service activities of any of the following, provided that his independent professional judgment is exercised in behalf of his client without interference or control by any organization or other person:

(1) A legal aid office or public defender office:

(a) Operated or sponsored by a duly accredited law school.

(b) Operated or sponsored by a bona fide non-profit community organization.

(c) Operated or sponsored by a governmental agency.

(d) Operated, sponsored, or approved by a bar association representative of the general bar of the geographical area in which the association exists.[120]

(2) A military legal assistance office.

(3) A lawyer referral service operated, sponsored, or approved by a bar association representative of the general bar of the geographical area in which the association exists.[121]

(4) A bar association representative of the general bar of the geographical area in which the association exists.[122]

111 *See ABA Opinion* 277 (1948) ; *cf.* ABA Canon 33 and *ABA Opinions* 318 (1967), 126 (1935), 115 (1934), and 106 (1934).

112 *See ABA Opinions* 318 (1967) and 316 (1967) ; *cf.* ABA Canon 33.

113 *Cf.* ABA Canons 27 and 28.

114 "We think it clear that a lawyer's seeking employment in an ordinary law office, or appointment to a civil service position, is not prohibited by . . . [Canon 27]." *ABA Opinion* 197 (1939).

115 "[A] lawyer may not seek from persons not his clients the opportunity to perform . . . a [legal] check-up." *ABA Opinion* 307 (1962).

116 *Cf. ABA Opinion* 78 (1932).

117 " 'No financial connection of any kind between the Brotherhood and any lawyer is permissible. No lawyer can properly pay any amount whatsoever to the Brotherhood or any of its departments, officers or members as compensation, reimbursement of expenses or gratuity in connection with the procurement of a case.' " In re Brotherhood of R. R. Trainmen, 13 Il1.2d 391, 398, 150 N.E. 2d 163, 167 (1958), *quoted in* In re Ratner, 194 Kan 362, 372, 399 P.2d 865, 873 (1965).
*See ABA Opinion* 147 (1935).

118 "This Court has condemned the practice of ambulance chasing through the media of runners and touters. In similar fashion we have with equal emphasis condemned the practice of direct solicitation by a lawyer. We have classified both offenses as serious breaches of the Canons of Ethics demanding severe treatment of the offending lawyer." State v. Dawson, 111 So.2d 427, 431 (Fla. 1959).

119 "Registrants [of a lawyer referral plan] may be required to contribute to the expense of operating it by a reasonable registration charge or by a reasonable percentage of fees collected by them." *ABA Opinion* 291 (1956).
*Cf. ABA Opinion* 227 (1941).

120 *Cf. ABA Opinion* 148 (1935).

121 *Cf. ABA Opinion* 227 (1941).

122 "If a bar association has embarked on a program of institutional advertising for an annual legal check-up and provides brochures and reprints, it is not improper to have these available in the lawyer's office for persons to read and take." *ABA Opinion* 307 (1962).
*Cf. ABA Opinion* 121 (1934).

(5) Any other non-profit organization that recommends, furnishes, or pays for legal services to its members or beneficiaries, but only in those instances and to the extent that controlling constitutional interpretation at the time of the rendition of the services requires the allowance of such legal service activities,[123] and only if the following conditions, unless prohibited by such interpretation, are met:

(a) The primary purposes of such organization do not include the rendition of legal services.

(b) The recommending, furnishing, or paying for legal services to its members is incidental and reasonably related to the primary purposes of such organization.

(c) Such organization does not derive a financial benefit from the rendition of legal services by the lawyer.

(d) The member or beneficiary for whom the legal services are rendered, and not such organization, is recognized as the client of the lawyer in that matter.

(E) A lawyer shall not accept employment when he knows or it is obvious that the person who seeks his services does so as a result of conduct prohibited under this Disciplinary Rule.

DR 2-104 Suggestion of Need of Legal Services.[124]

(A) A lawyer who has given unsolicited advice to a layman that he should obtain counsel or take legal action shall not accept employment resulting from that advice,[125] except that:

(1) A lawyer may accept employment by a close friend, relative, former client (if the advice is germane to the former employment), or one whom the lawyer reasonably believes to be a client.[126]

(2) A lawyer may accept employment that results from his participation in activities designed to educate laymen to recognize legal problems, to make intelligent available legal services if such activities are conducted or sponsored by any of the offices or organizations enumerated in DR 2-103(D) (1) through (5), to the extent and tinder the conditions prescribed therein.

(3) A lawyer wno is furnished or paid by any of the offices or organizations enumerated in DR 2-103(D) (1), (2), or (5) may represent a member or beneficiary thereof, to the extent and under the conditions prescribed therein.

(4) Without affecting his right to accept employment, a lawyer may speak publicly or write for publication on legal topics[127] so long as he does not emphasize his own professional experience or reputation and does not undertake to give individual advice.

(5) If success in asserting rights or defenses of his client in litigation in the nature of a class action is dependent upon the joinder of others, a lawyer may accept, but shall not seek, employment from those contacted for the purpose of obtaining their joinder.[128]

DR 2-105 Limitation of Practice.[129]

(A) A lawyer shall not hold himself out publicly as a specialist[130] or as limiting his practice,[131] except as permitted under DR 2-102(A) (6) or as follows:

(1) A lawyer admitted to practice before the United States Patent Office may use the designation "Patents," "Patent Attorney," or "Patent Lawyer," or any combination of those terms, on his letterhead and office sign. A lawyer engaged in the trademark practice may use the designation "Trademarks," "Trademark Attorney," or "Trademark Lawyer," or any combination of those terms, on his letterhead and office sign, and a lawyer engaged in the admiralty practice may use the designation "Admiralty," "Proctor in Admiralty," or "Admiralty Lawyer," or any combination of those terms, on his letterhead and office sign.[132]

[123] United Mine Workers v. Ill. State Bar Ass'n, 389 U.S. 217, 19 L.Ed.2d 426, 88 S.Ct. 353 (1967) ; Brotherhood of R.R. Trainmen v. Virginia, 371 U.S. 1, 12 L.Ed.2d 89, 84 S.Ct. 1113 (1964) ; NAACP v. Button, 371 U.S. 415, 9 L. Ed.2d 405, 83 S.Ct. 328 (1963).

[124] ABA Canon 28.

[123] *cf. ABA Opinions* 229 (1941) and 173 (1937).

[126] "It certainly is not improper for a lawyer to advise his regular clients of new statutes, court decisions, and administrative rulings, which may affect the client's interests, provided the communication is strictly limited to such information. .

"When such communications go to concerns or individuals other than regular clients of the lawyer, they are thinly disguised advertisements for professional employment, and are obviously improper." *ABA Opinion* 213 (1941).

"It is our opinion that where the lawyer has no reason to believe that he has been supplanted by another lawyer, it is not only his right, but it might even be his duty to advise his client of any change of fact or law which might defeat the client's testamentary purpose as expressed in the will

"Periodic notices might be sent to the client for whom a lawyer has drawn a will, suggesting that it might be wise for the client to reexamine his will to determine whether or not there has been any change in his situation requiring a modification of his will." *ABA Opinion* 210 (1941). *Cf.* ABA Canon 28.

[127] *Cf. ABA Opinion* 168 (1937).

[128] *But cf. ABA Opinion* 111 (1934).

[129] *See* ABA Canon 45; *cf.* ABA Canons 27, 43, and 46.

[130] *Cf. ABA Opinions* 228 (1941) and 194 (1939).

[131] *See ABA Opinions* 251 (1943) and 175 (1938).

[132] *See* ABA Canon 27; *cf. ABA Opinion* 286 (1952).

(2) A lawyer may permit his name to be listed in lawyer referral service offices according to the fields of law in which he will accept referrals.

(3) A lawyer available to act as a consultant to or as an associate of other lawyers in a particular branch of law or legal service may distribute to other lawyers and publish in legal journals a dignified announcement of such availability,[133] but the announcement shall not contain a representation of special competence or experience.[134] The announcement shall not be distributed to lawyers more frequently than once in a calendar year, but it may be published periodically in legal journals.

(4) A lawyer who is certified as a specialist in a particular field of law or law practice by the authority having jurisdiction under state law over the subject of specialization by lawyers may hold himself out as such specialist but only in accordance with the rules prescribed by that authority.135

DR 2-106 Fees for Legal Services.136

(A) A lawyer shall not enter into an agreement for, charge, or collect an illegal or clearly excessive fee.137

(B) A fee is clearly excessive when, after a review of the facts, a lawyer of ordinary prudence would be left with a definite and firm conviction that the fee is in excess of a reasonable fee. Factors to be considered as guides in determining the reasonableness of a fee include the following:

(1) The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly.

(2) The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer.

(3) The fee customarily charged in the locality for similar legal services.

(4) The amount involved and the results obtained.

(5) The time limitations imposed by the client or by the circumstances.

(6) The nature and length of the professional relationship with the client.

(7) The experience, reputation, and ability of the lawyer or lawyers performing the services.

(8) Whether the fee is fixed or contingent.138

(C) A lawyer shall not enter into an arrangement for, charge, or collect a contingent fee for representing a defendant in a criminal case.139

DR 2-107 Division of Fees Among Lawyers.

(A) A lawyer shall not divide a fee for legal services with another lawyer who is not a partner in or associate of his law firm or law office, unless:

(1) The client consents to employment of the other lawyer after a full disclosure that a division of fees will be made.

(2) The division is made in proportion to the services performed and responsibility assumed by each.140

(3) The total fee of the lawyers does not clearly exceed reasonable compensation for all legal services they rendered the client.141

133 *Cf. ABA Opinion* 194 (1939).

134 *See* ABA Canon 46.

135 This provision is included to conform to action taken by the ABA House of Delegates at the Mid-Winter Meeting, January, 1969.

136 *See* ABA Canon 12.

137 The charging of a "clearly excessive fee" is a ground for discipline. State ex rel. Nebraska State Bar Ass'n. v. Richards, 165 Neb. 80, 90, 84 N.W.2d 136, 143 (1957).

"An attorney has the right to contract for any fee he chooses so long as it is not excessive (see Opinion 190), and this Committee is not concerned with the amount of such fees unless so excessive as to constitute a misappropriation of the client's funds (see Opinion 27)." *ABA Opinion* 320 (1968).

*Cf. ABA Opinions* 209 (1940), 190 (1939), and 27 (1930) and State ex rel. Lee v. Buchanan, 191 So.2d 33 (Fla. 1966).

138 *Cf.* ABA Canon 13; *see generally* MacKinnon, Contingent Fees for Legal Services (1964) (A Report of the American Bar Foundation).

139 "Contingent fees, whether in civil or criminal cases, are a special concern of the law. .

"In criminal cases, the rule is stricter because of the danger of corrupting justice. The second part of Section 542 of the Restatement [of Contracts] reads : 'A bargain to conduct a criminal case . . . in consideration of a promise of a fee contingent on success is illegal. . . . Peyton v. Margiotti, 398 Pa. 86, 156 A.2d 865, 967 (1959).

"The third area of practice in which the use of the contingent fee is generally considered to be prohibited is the prosecution and defense of criminal cases. However, there are so few cases, and these are predominantly old, that it is doubtful that there can be said to be any current law on the subject. . . . In the absence of cases on the validity of contingent fees for defense attorneys, it is necessary to rely on the consensus among commentators that such a fee is void as against public policy. The nature of criminal practice itself makes unlikely the use of contingent fee contracts." MacKinnon, Contingent Fees for Legal Services 52 (1964) (A Report of the American Bar Foundation).

140 *See* ABA Canon 34 and *ABA Opinions* 316 (1967) and 294 (1958) ; *see generally ABA Opinions* 265 (1945), 204 (1940), 190 (1939), 171 (1937), 153 (1936), 97 (1933), 63 (1932), 28 (1930), 27 (1930), and 18 (1930).

141 *"Canon 12* contemplates that a lawyer's fee should not exceed *the value of the services* rendered. .

"Canon *12* applies, whether joint or separate fees ari charged [by associate attorneys] . . .." *ABA Opinion* 204 (1940).

(B) This Disciplinary Rule does not prohibit payment to a former partner or associate pursuant to a separation or retirement agreement.

DR 2-108 Agreements Restricting the Practice of a Lawyer.

(A) A lawyer shall not be a party to or participate in a partnership or employment agreement with another lawyer that restricts the right of a lawyer to practice law after the termination of a relationship created by the agreement, except as a condition to payment of retirement benefits.142

(B) In connection with the settlement of a controversy or suit, a lawyer shall not enter into an agreement that restricts his right to practice law.

DR 2-109 Acceptance of Employment.

(A) A lawyer shall not accept employment on behalf of a person if he knows or it is obvious that such person wishes to:

(1) Bring a legal action, conduct a defense, or assert a position in litigation, or otherwise have steps taken for him, merely for the purpose of harassing or maliciously injuring any person.143

(2) Present a claim or defense in litigation that is not warranted under existing law, unless it can be supported by good faith argument for an extension, modification, or reversal of existing law.

DR 2-110 Withdrawal from Employment.144

(A) In General.

(1) If permission for withdrawal from employment is required by the rules of a tribunal, a lawyer shall not withdraw from employment in a proceeding before that tribunal without its permission.

(2) In any event, a lawyer shall not withdraw from employment until he has taken reasonable steps to avoid foreseeable prejudice to the rights of his client, including giving due notice to his client, allowing time for employment of other counsel, delivering to the client all papers and property to which the client is entitled, and complying with applicable laws and rules.

(3) A lawyer who withdraws from employment shall refund promptly any part of a fee paid in advance that has not been earned.

(B) Mandatory withdrawal.

A lawyer representing a client before a tribunal, with its permission if required by its rules, shall withdraw from employment, and a lawyer representing a client in other matters shall withdraw from employment, if:

(1) He knows or it is obvious that his client is bringing the legal action, conducting the defense, or asserting a position in the litigation, or is otherwise having steps taken for him, merely for the purpose of harassing or maliciously injuring any person.

(2) He knows or it is obvious that his continued employment will result in violation of a Disciplinary Rule.145

(3) His mental or physical condition renders it unreasonably difficult for him to carry out the employment effectively.

(4) He is discharged by his client.

(C) Permissive withdrawal.146

If DR 2-110(B) is not applicable, a lawyer may not request permission to withdraw in matters pending before a tribunal, and may not withdraw in other matters, unless such request or such withdrawal is because:

(1) His client:

(a) Insists upon presenting a claim or defense that is not warranted under existing law and cannot be supported by good faith argument for an extension, modification, or reversal of existing law.147

(b) Personally seeks to pursue an illegal course of conduct.

(c) Insists that the lawyer pursue a course of conduct that is illegal or that is prohibited under the Disciplinary Rules.

(d) By other conduct renders it unreasonably difficult for the law-

142 "[A] general covenant restricting an employed lawyer, after leaving the employment, from practicing in the community for a stated period, appears to this Committee to be an unwarranted restriction on the right of a lawyer to choose where he will practice and inconsistent with our professional status. Accordingly, the Committee is of the opinion it would be improper for the employing lawyer to require the covenant and likewise for the employed lawyer to agree to it." *ABA Opinion* 300 (1961).

143 *See* ABA Canon 30.

"*Rule 13.* . . . A member of the State Bar shall not accept employment to prosecute or defend a case solely out of spite, or solely for the purpose of harassing or delaying another . . .." Cal.Business and Professions Code 6067 (West 1962).

144 *Cf.* ABA Canon 44.

145 *See also* Code of Professional Responsibility, DR 5-102 and DR 5-105.

146 *Cf.* ABA Canon 4.

147 *Cf.* Anders v. California, 386 U.S. 738, 18 L.Ed.2d 493, 87 S.Ct. 1396 (1967), *rehearing denied,* 388 U.S. 924, 18 L.Ed.2d 1377, 87 S.Ct. 2094 (1967).

yer to carry out his employment effectively.

(e) Insists, in a matter not pending before a tribunal, that the lawyer engage in conduct that is contrary to the judgment and advice of the lawyer but not prohibited under the Disciplinary Rules.

(f) Deliberately disregards an agreement or obligation to the lawyer as to expenses or fees.

His continued employment is likely to result in a violation of a Disciplinary Rule.

His inability to work with co-counsel indicates that the best interests of the client likely will be served by withdrawal.

His mental or physical condition renders it difficult for him to carry out the employment effectively.

His client knowingly and freely assents to termination of his employment.

He believes in good faith, in a proceeding pending before a tribunal, that the tribunal will find the existence of other good cause for withdrawal.

## CANON 3

### A Lawyer Should Assist in Preventing the Unauthorized Practice of Law

#### ETHICAL CONSIDERATIONS

EC 3-1 The prohibition against the practice of law by a layman is grounded in the need of the public for integrity and competence of those who undertake to render legal services. Because of the fiduciary and personal character of the lawyer-client relationship and the inherently complex nature of our legal system, the public can better be assured of the requisite responsibility and competence if the practice of law is confined to those who are subject to the requirements and regulations imposed upon members of the legal profession.

EC 3-2 The sensitive variations in the considerations that bear on legal determinations often make it difficult even for a lawyer to exercise appropriate professional judgment, and it is therefore essential that the personal nature of the relationship of client and lawyer be preserved. Competent professional judgment is the product of a trained familiarity with law and legal processes, a disciplined, analytical approach to legal problems, and a firm ethical commitment.

EC 3-3 A non-lawyer who undertakes to handle legal matters is not governed as to integrity or legal competence by the same rules that govern the conduct of a lawyer. A lawyer is not only subject to that regulation but also is committed to high standards of ethical conduct. The public interest is best served in legal matters by a regulated profession committed to *such* standards.' The Disciplinary Rules protect the public in that they prohibit a lawyer from seeking employment by improper overtures, from acting in cases of divided loyalties, and from submitting to the control of others in the exercise of his judgment. Moreover, a person who entrusts legal matters to a lawyer is protected by the attorney-client privilege and by the duty of the lawyer to hold inviolate the confidences and secrets of his client.

EC 3-4 A layman who seeks legal services often is not in a position to judge whether he will receive proper professional attention. The entrustment of a legal matter may well involve the confidences, the reputation, the property, the freedom, or even the life of the client. Proper protection of members of the public demands that no person be permitted to act in the confidential and demanding capacity of a lawyer unless he is subject to the regulations of the legal profession.

EC 3-5 It is neither necessary nor desirable to attempt the formulation of a single, specific definition of what constitutes the practice of law.2 Functionally, the practice of law relates to the rendition of services for others that call for the professional judgment of a lawyer. The essence of the professional judgment of the lawyer is his educated ability to relate the general body and philosophy of law to a specific legal problem of a client; and thus, the public interest will be better served if only lawyers are permitted to act in matters involving professional judgment. Where this professional judgment is not involved, non-lawyers, such as court clerks, police officers, abstracters, and many governmental employees, may engage in occupations that require a special knowledge of law in certain areas. But the services of a lawyer are essential in the public interest whenever the exercise of professional legal judgment is required.

EC 3-6 A lawyer often delegates tasks to clerks, secretaries, and other lay persons. Such delegation is proper if the lawyer maintains a direct relationship with his client, supervises the delegated work, and has complete professional responsibility for the work product.[3] This delegation enables a law-

[1] "The condemnation of the unauthorized practice of law is designed to protect the public from legal services by persons unskilled in the law. The prohibition of lay intermediaries is intended to insure the loyalty of the lawyer to the client unimpaired by intervening and possibly conflicting interests." Cheatham, *Availability of Legal Services: The Responsibility of the Individual Lawyer and of the Organized Bar,* 12 U.C.L.A.L.Rev. 438, 439 (1965).

[2] "What constitutes unauthorized practice of the law in a particular jurisdiction is a matter for determination by the courts of that jurisdiction." *ABA Opinion* 198 (1939).

"In the light of the historical development of the lawyer's functions, it is impossible to lay down an exhaustive definition of 'the practice of law' by attempting to enumerate every conceivable act performed by lawyers in the normal course of their work." State Bar of Arizona v. Arizona Land Title & Trust Co., 90 Ariz. 76, 87, 366 P.2d 1, 8-9 (1961), *modified,* 91 Ariz. 293, 371 P.2d 1020 (1962).

[3] "A lawyer can employ lay secretaries, lay investigators, lay detectives, lay researchers, accountants, lay scriveners,

yer to render legal service more economically and efficiently.

EC 3-7 The prohibition against a non-lawyer practicing law does not prevent a layman from representing himself, for then he is ordinarily exposing only himself to possible injury. The purpose of the legal profession is to make educated legal representation available to the public; but anyone who does not wish to avail himself of such representation is not required to do so. Even so, the legal profession should help members of the public to recognize legal problems and to understand why it may be unwise for them to act for themselves in matters having legal consequences.

EC 3-8 Since a lawyer should not aid or encourage a layman to practice law, he should not practice law in association with a layman or otherwise share legal fees with a layman.[4] This does not mean, however, that the pecuniary value of the interest of a deceased lawyer in his firm or practice may not be paid to his estate or specified persons such as his widow or heirs.[5] In like manner, profit-sharing retirement plans of a lawyer or law firm which include non-lawyer office employees are not improper.[6] These limited exceptions to the rule against sharing legal fees with laymen are permissible since they do not aid or encourage laymen to practice law.

EC 3-9 Regulation of the practice of law is accomplished principally by the respective states.? Authority to engage in the practice of law conferred in any jurisdiction is not per se a grant of the right to practice elsewhere, and it is improper for a lawyer to engage in practice where he is not permitted by law or by court order to do so. However, the demands of business and the mobility of our society pose distinct problems in the regulation of the practice of law by the states.[8] In furtherance of the public interest, the legal profession should discourage regulation that unreasonably imposes territorial limitations upon the right of a lawyer to handle the legal affairs of his client or upon the opportunity of a client to obtain the services of a lawyer of his choice in all matters including the presentation of a contested matter in a tribunal before which the lawyer is not permanently admitted to practice.9

nonlawyer draftsmen or nonlawyer researchers. In fact, he may employ nonlawyers to do any task for him except counsel clients about law matters, engage directly in the practice of law, appear in court or appear in formal proceedings a part of the judicial process, so long as it is he who takes the work and vouches for it to the client and becomes responsible to the client." *ABA Opinion* 316 (1967).

*ABA* Opinion 316 (1967) also stated that if a lawyer practices law as part of a law firm which includes lawyers from several states, he may delegate tasks to firm members in other states so long as he "is the person who, on behalf of the firm, vouched for the work of all of the others and, with the client and in the courts, did the legal acts defined by that state as the practice of law."

"A lawyer cannot delegate his professional responsibility to a law student employed in his office. He may avail himself of the assistance of the student in many of the fields of the lawyer's work, such as examination of case law, finding and interviewing witnesses, making collections of claims, examining court records, delivering papers, conveying important messages, and other similar matters. But the student is not permitted, until he is admitted to the Bar, to perform the professional functions of a lawyer, such as conducting court trials, giving professional advice to clients or drawing legal documents for them. The student in all his work must act as agent for the lawyer employing him, who must supervise his work and be responsible for his good conduct." *ABA Opinion* 85 (1932).

[4] "No division of fees for legal services is proper, except with another lawyer . . .." ABA Canon 34. Otherwise, according to *ABA Opinion* 316 (1967), "[t]he Canons of Ethics do not examine into the method by which such persons are remunerated by the lawyer. . . . They may be paid a salary, a per diem charge, a flat fee, a contract price, etc."

*See* ABA Canons 33 and 47.

[5] "Many partnership agreements provide that the active partners, on the death of any one of them, are to make payments to the estate or to the nominee of a deceased partner on a pre-determined formula. It is only where the effect of such an arrangement is to make the estate or nominee a member of the partnership along with the surviving partners that it is prohibited by Canon *34*. Where the payments are made in accordance with a pre-existing agreement entered into by the deceased partner during his lifetime and providing for a fixed method for determining their amount based upon the value of services rendered during the partner's lifetime and providing for a fixed period over which the payments are to be made, this is not the case. Under these circumstances, whether the payments are considered to be delayed payment of compensation earned but withheld during the partner's lifetime, or whether they are considered to be an approximation of his interest in matters pending at the time of his death, is immaterial. In either event, as Henry S. Drinker says in his book, Legal Ethics, at page 189: 'It would seem, however, that a reasonable agreement to pay the estate a proportion of the receipts for a reasonable period is a proper practical settlement for the lawyer's services to his retirement or death.' " *ABA Opinion* 308 (1963).

[6] *Cf. ABA Opinion* 311 (1964).

[7] "That the States have broad *power* to regulate the practice of law is, of course, beyond question." United Mine Workers v. Ill. State Bar Ass'n, 389 U.S. 217, 222 (1967).

"It is a matter of law, not of ethics, as to where an individual may practice law. Each state has its own rules." *ABA Opinion* 316 (1967).

[8] "Much of clients' business crosses state lines. People are mobile, moving from state to state. Many metropolitan areas cross state lines. It is common today to have a single economic and social community involving more than one state. The business of a single client may involve legal problems in several states." *ABA Opinion* 316 (1967).

[9] "[W] e reaffirmed the general principle that legal services to New Jersey residents with respect to New Jersey matters may ordinarily be furnished only by New Jersey counsel ; but we pointed out that there may be multistate transactions where strict adherence to this thesis would not be in the public interest and that, under the circumstances, it would have been not only more costly to the client but also 'grossly impractical and inefficient' to have had the settlement negotiations conducted by separate lawyers from different states." In re Estate of Waring, 47 N.J. 367, 376, 221 A.2d 193, 197 (1966).

*Cf. ABA Opinion* 316 (1967).

## DISCIPLINARY RULES

DR 3-101 Aiding Unauthorized Practice of Law.[10]

(A) A lawyer shall not aid a non-lawyer in the unauthorized practice of law.[11]

(B) A lawyer shall not practice law in a jurisdiction where to do so would be in violation of regulations of the profession in that jurisdiction.[12]

DR 3-102 Dividing Legal Fees with a Non-Lawyer.

(A) A lawyer or law firm shall not share legal fees with a non-lawyer,[13] except that:

(1) An agreement by a lawyer with his firm, partner, or associate may provide for the payment of money, over a reasonable period of time after his death, to his estate or to one or more specified persons.[14]

(2) A lawyer who undertakes to complete unfinished legal business of a deceased lawyer may pay to the estate of the deceased lawyer that proportion of the total compensation which fairly represents the services rendered by the deceased lawyer.

(3) A lawyer or law firm may include nonlawyer employees in a retirement plan, even though the plan is based in whole or in part on a profit-sharing arrangement.[15]

DR 3-103 Forming a Partnership with a Non-Lawyer.

(A) A lawyer shall not form a partnership with a non-lawyer if any of the activities of the partnership consist of the practice of law.[16]

10 Conduct permitted by the Disciplinary Rules of Canons 2 and 5 does not violate DR 3-101.

11 *See* ABA Canon 47.

12 It should be noted, however, that a lawyer may engage in conduct, otherwise prohibited by this Disciplinary Rule, where such conduct is authorized by preemptive federal legislation. *See* Sperry v. Florida, 373 U.S. 379, 10 L.Ed.2d 428, 83 S.Ct. 1322 (1963).

13 *See* ABA Canon 34 and *ABA Opinions* 316 (1967), 180 (1938), and 48 (1931).

"The receiving attorney shall not under any guise or form share his fee for legal services with a lay agency, personal or corporate, without prejudice, however, to the right of the lay forwarder to charge and collect from the, creditor proper compensation for non-legal services rendered by the law *[sic]* forwarder which are separate and apart from the services performed by the receiving attorney." *ABA* Opinion 294 (1958).

14 *See ABA Opinions* 309 (1963) and 266 (1945).

15 *Cf. ABA Opinion* 311 (1964).

16 *See* ABA Canon 33; *cf. ABA Opinions* 239 (1942) and 201 (1940).

*ABA Opinion* 316 (1967) states that lawyers licensed in different jurisdictions may, under certain conditions, enter "into an arrangement for the practice of law" and that a lawyer licensed in State A is not, for such purpose, a layman in State B.

## *CANON 4*

### A Lawyer Should Preserve the Confidences and Secrets of a Client

#### ETHICAL CONSIDERATIONS

EC 4-1 Both the fiduciary relationship existing between lawyer and client and the proper functioning of the legal system require the preservation by the lawyer of confidences and secrets of one who has employed or sought to employ him.[1] A client must feel free to discuss whatever he wishes with his lawyer and a lawyer must be equally free to obtain information beyond that volunteered by his client.[2] A lawyer should be fully informed of all the facts of the matter he is handling in order for his client to obtain the full advantage of our legal system. It is for the lawyer in the exercise of his independent professional judgment to separate the relevant and important from the irrelevant and unimportant. The observance of the ethical obligation of a lawyer to hold inviolate the confidences and secrets of his client not only facilitates the full development of facts essential to proper representation of the client but also encourages laymen to seek early legal assistance.

EC 4-2 The obligation to protect confidences and secrets obviously does not preclude a lawyer from revealing information when his client consents

1 *See* ABA Canons 6 and 37 and *ABA Opinion* 287 (1953).

"The reason underlying the rule with respect to confidential communications between attorney and client is well stated in Mecham on Agency, 2d Ed., Vol. 2, § 2297, as follows : 'The purposes and necessities of the relation between a client and his attorney require, in many cases, on the part of the client, the fullest and freest disclosures to the attorney of the client's objects, motives and acts. This disclosure is made in the strictest confidence, relying upon the attorney's honor and fidelity. To permit the attorney to reveal to others what is so disclosed, would be not only a gross violation of a sacred trust upon his part, but it would utterly destroy and prevent the usefulness and benefits to be derived from professional assistance. Based upon considerations of public policy, therefore, the law wisely declares that all confidential communications and disclosures, made by a client to his legal adviser for the purpose of obtaining his professional aid or advice, shall be strictly privileged ;—that the attorney shall not be permitted, without the consent of his client,—and much less will he be compelled—to reveal or disclose communications made to him under such circumstances.' " *ABA Opinion* 250 (1943).

"While it is true that complete revelation of relevant facts should be encouraged for trial purposes, nevertheless an attorney's dealings with his client, if both are sincere, and if the dealings involve more than mere technical matters, should be immune to discovery proceedings. There must be freedom from fear of revealment of matters disclosed to an attorney because of the peculiarly intimate relationship existing." Ellis-Foster Co. v. Union Carbide & Carbon Corp., 159 F.Supp. 917, 919 (D.N.J. 1958).

*Cf. ABA Opinions* 314 (1965), 274 (1946) and 268 (1945).

2 "While it is the great purpose of law to ascertain the truth, there is the countervailing necessity of insuring the right of every person to freely and fully confer and confide in one having knowledge of the law, and skilled in its practice, in order that the former may have adequate advice and a proper defense. This assistance can be made safely and readily available only when the client is free

after full disclosure,[3] when necessary to perform his professional employment, when permitted by a Disciplinary Rule, or when required by law. Unless the client otherwise directs, a lawyer may disclose the affairs of his client to partners or associates of his firm. It is a matter of common knowledge that the normal operation of a law office exposes confidential professional information to nonlawyer employees of the office, particularly secretaries and those having access to the files; and this obligates a lawyer to exercise care in selecting and training his employees so that the sanctity of all confidences and secrets of his clients may be preserved. If the obligation extends to two or more clients as to the same information, a lawyer should obtain the permission of all before revealing the information. A lawyer must always be sensitive to the rights and wishes of his client and act scrupulously in the making of decisions which may involve the disclosure of information obtained in his professional relationship.[4] Thus, in the absence of consent of his client after full disclosure, a lawyer should not associate another lawyer in the handling of a matter; nor should he, in the absence of consent, seek counsel from another lawyer if there is a reasonable possibility that the identi of the client or his confidences or secrets would be revealed to such lawyer. Both social amenities and professional duty should cause a lawyer to shun indiscreet conversations concerning his clients.

EC 4-3 Unless the client otherwise directs, it is not improper for a lawyer to give limited information from his files to an outside agency necessary for statistical, bookkeeping, accounting, data processing, banking, printing, or other legitimate purposes, provided he exercises due care in the selection of the agency and warns the agency that the information must be kept confidential.

EC 4-4 The attorney-client privilege is more limited than the ethical obligation of a lawyer to guard the confidences and secrets of his client. This ethical precept, unlike the evidentiary privilege, exists without regard to the nature or source of information or the fact that others share the knowledge. A lawyer should endeavor to act in a manner which preserves the evidentiary privilege; for example, he should avoid professional discussions in the presence of persons to whom the privilege does not extend. A lawyer owes an obligation to advise the client of the attorney-client privilege and timely to assert the privilege unless it is waived by the client.

EC 4-5 A lawyer should not use information acquired in the course of the representation of a client to the disadvantage of the client and a lawyer should not use, except with the consent of his client after full disclosure, such information for his own purposes.[5] Likewise, a lawyer should be diligent in his efforts to prevent the misuse of such information by his employees and associates.6 Care should be exercised by a lawyer to prevent the disclosure of the confidences and secrets of one client to another," and no employment should be accepted that might require such disclosure.

EC 4-6 The obligation of a lawyer to preserve the confidences and secrets of his client continues after the termination of his employment.[8] Thus a lawyer should not attempt to sell a law practice as a going business because, among other reasons, to do so would involve the disclosure of confidences and secrets.[9] A lawyer should also provide for the protection of the confidences and secrets of his client following the termination of the practice of the lawyer, whether termination is due to death, disability, or retirement. For example, a lawyer might provide for the personal papers of the client to be returned to him and for the papers of the lawyer to be delivered to another *lawyer* or to be destroyed. In determining the method of disposition, the instructions and wishes of the client should be a dominant consideration.

## DISCIPLINARY RULES

### DR 4-101 Preservation of Confidences and Secrets of a Client.10

(A) "Confidence" refers to information protected by the attorney-client privilege under applicable law, and "secret" refers to other information gained in the professional relationship that the client has requested be held inviolate or the disclosure of which would be em-

from the consequences of apprehension of disclosure by reason of the subsequent statements of the skilled lawyer." Baird v. Koerner, 279 F.2d 623, 629-30 (9th Cir. 1960).
*Cf. ABA Opinion* 150 (1936).

[3] "Where . . . [a client] knowingly and after full disclosure participates in a [legal fee] financing plan which requires the furnishing of certain information to the bank, clearly by his conduct he has waived any privilege as to that information." *ABA Opinion* 320 (1968).

[4] "The lawyer must decide when he takes a case whether it is a suitable one for him to undertake and after this decision is made, he is not justified in turning against his client by exposing injurious evidence entrusted to him. . . . [D]oing something intrinsically regrettable, because the only alternative involves worse consequences, is a necessity in every profession." Williston, Life and Law 271 (1940).
*Cf. ABA Opinions* 177 (1938) and 83 (1932).

*See* ABA Canon 11.

[6] *See* ABA Canon 37.

[7] *See* ABA Canons 6 and 37.
"[A]n attorney must not accept professional employment against a client or a former client which will, or even may require him to use confidential information obtained by the attorney in the course of his professional relations with such client regarding the subject matter of the employment . . " *ABA Opinion* 165 (1936).

[8] *See* ABA Canon 37.
"Confidential communications between an attorney and his client, made because of the relationship and concerning the subject-matter of the attorney's employment, are generally privileged from disclosure without the consent of the client, and this privilege outlasts the attorney's employment. Canon *37." ABA Opinion* 154 (1936).

[9] *Cf. ABA Opinion* 266 (1945).

[10] *See* ABA Canon 37; *cf.* ABA Canon 6.

barrassing or would be likely to be detrimental to the client.

(B) Except when permitted under DR 4-101(C), a lawyer shall not knowingly:

(1) Reveal a confidence or secret of his client."

(2) Use a confidence or secret of his client to the disadvantage of the client.

(3) Use a confidence or secret of his client for the advantage of himself [12] or of a third person,[13] unless the client consents after full disclosure.

(C) A lawyer may reveal:

(1) Confidences or secrets with the consent of the client or clients affected, but only after a full disclosure to them.14

(2) Confidences or secrets when permitted under Disciplinary Rules or required by law or court order.15

(3) The intention of his client to commit a crime [16] and the information necessary to prevent the crime.17

(4) Confidences or secrets necessary to establish or collect his fee [18] or to defend himself or his employees or associates against an accusation of wrongful conduct.19

(D) A lawyer shall exercise reasonable care to prevent his employees, associates, and others whose services are utilized by him from disclosing or using confidences or secrets of a client, except that a lawyer may reveal the information allowed by DR 4-101(C) through an employee.

[11] "§ 6068 . . It is the duty of an attorney :

"(e) To maintain inviolate the confidence, and at every peril to himself to preserve the secrets, of his client." Cal. Business and Professions Code § 6068 (West 1962). Virtually the same provision is found in the Oregon statutes. Ore.Rev.Stats. ch. 9, § 9.460(5).

"Communications between lawyer and client are privileged (Wigmore on Evidence, 3d. Ed., Vol. 8, §§ 2290-2329). The modern theory underlying the privilege is subjective and is to give the client freedom of apprehension in consulting his legal adviser *(ibid., §* 2290, p. 548). The privilege applies to communications made in seeking legal advice for any purpose *(ibid., §* 2294, p. 563). The mere circumstance that the advice is given without charge therefore does not nullify the privilege *(ibid., §* 2303)." *ABA Opinion* 216 (1941).

"It is the duty of an attorney to maintain the confidence and preserve inviolate the secrets of his client . . - '' *ABA Opinion* 155 (1936).

[12] *See* ABA Canon 11.

"The provision respecting employment is in accord with the general rule announced in the adjudicated cases that a lawyer may not make use of knowledge or information acquired by him through his professional relations with his client, or in the conduct of his client's business, to his own advantage or profit (7 C.J.S., § 125, p. 958; Healy v. Gray, 184 Iowa 111, 168 N.W. 222; Baumgardner *v.* Hudson, D.C.App., 277 F. 552; Goodrum v. Clement, D.C.App., 277 F. 586)." *ABA Opinion* 250 (1943).

[13] *See ABA Opinion* 177 (1938).

[14] "[A lawyer] may not divulge confidential communications, information, and secrets imparted to him by the client or acquired during their professional relations, unless he is authorized to do so by the client (People v. Gerold, 265 Ill. 448, 107 N.E. 165, 178; Murphy v. Riggs, 238 Mich. 151, 213 N.W. 110, 112; Opinion of this Committee, No. 91)." *ABA Opinion* 202 (1940).

*Cf. ABA Opinion* 91 (1933).

[15] "A defendant in a criminal case when admitted to bail is not only regarded as in the custody of his bail, but he is also in the custody of the law, and admission to bail does not deprive the court of its inherent power to deal with the person of the prisoner. Being in lawful custody, the defendant is guilty of an escape when he gains his liberty before he is delivered in due process of law, and is guilty of a separate offense for which he may be punished. In failing to disclose his client's whereabouts as a fugitive under these circumstances the attorney would not only be aiding his client to escape trial on the charge for which he was indicted, but would likewise be aiding him in evading prosecution for the additional offense of escape.

"It is the opinion of the committee that under such circumstances the attorney's knowledge of his client's whereabouts is not privileged, and that he may be disciplined for failing to disclose that information to the proper authorities. . . '' *ABA Opinion* 155 (1936).

"We held in *Opinion* 155 that a communication by a client to his attorney in respect to the future commission of an unlawful act or to a continuing wrong is not privileged from disclosure. Public policy forbids that the relation of attorney and client should be used to conceal wrongdoing on the part of the client.

"When an attorney representing a defendant in a criminal case applies on his behalf for probation or suspension of sentence, he represents to the court, by implication at least, that his client will abide by the terms and conditions of the court's order. When that attorney is later advised of a violation of that order, it is his duty to advise his client of the consequences of his act, and endeavor to prevent a continuance of the wrongdoing. If his client thereafter persists in violating the terms and conditions of his probation, it is the duty of the attorney as an officer of the court to advise the proper authorities concerning his client's conduct. Such information, even though coming to the attorney from the client in the course of his professional relations with respect to other matters in which he represents the defendant, is not privileged from disclosure. - '' *ABA Opinion* 156 (1936).

[16] *ABA Opinion* 314 (1965) indicates that a lawyer must disclose even the confidences of his clients if "the facts in the attorney's possession indicate beyond reasonable doubt that a crime will be committed."

*See ABA Opinion* 155 (1936).

[17] *See* ABA Canon 37 and *ABA Opinion* 202 (1940).

[18] *Cf. ABA Opinion* 250 (1943).

[19] *See* ABA Canon 37 and *ABA Opinions* 202 (1940) and 19 (1930).

"[T]he adjudicated cases recognize an exception to the rule [that a lawyer shall not reveal the confidences of his client], where disclosure is necessary to protect the attorney's interests arising out of the relation of attorney and client in which disclosure was made.

"The exception is stated in Mechem on Agency, 2d Ed., Vol. 2, § 2313, as follows : 'But the attorney may disclose information received from the client when it becomes necessary for his own protection, as if the client should bring an action against the attorney for negligence or misconduct, and it became necessary for the attorney to

## CANON 5

### A Lawyer Should Exercise Independent Professional Judgment on Behalf of a Client

ETHICAL CONSIDERATIONS

EC 5-1 The professional judgment of a lawyer should be exercised, within the bounds of the law, solely for the benefit of his client and free of compromising influences and loyalties. [1] Neither his personal interests, the interests of other clients, nor the desires of third persons should be permitted to dilute his loyalty to his client.

*Interests of a Lawyer That May Affect His Judgment*

EC 5-2 A lawyer should not accept proffered employment if his personal interests or desires will, or there is a reasonable probability that they will, affect adversely the advice to be given or services to be rendered the prospective client.[2] After accepting employment, a lawyer carefully should refrain from acquiring a property right or assuming a position that would tend to make his judgment less protective of the interests of his client.

EC 5-3 The self-interest of a lawyer resulting from his ownership of property in which his client also has an interest or which may affect property of his client may interfere with the exercise of free judgment on behalf of his client. If such interference would occur with respect to a prospective client, a lawyer should decline employment proffered by him. After accepting employment, a lawyer should not acquire property rights that would adversely affect his professional judgment in the representation of his client. Even if the property interests of a lawyer do not presently interfere with the exercise of his independent judgment, but the likelihood of interference can reasonably be foreseen by him, a lawyer should explain the situation to his client and should decline employment or withdraw unless the client consents to the continuance of the relationship after full disclosure. A lawyer should not seek to persuade his client to permit him to invest in an undertaking of his client nor make improper use of his professional relationship to influence his client to invest in an enterprise in which the lawyer is interested.

EC 5-4 If, in the course of his representation of a client, a lawyer is permitted to receive from his client a beneficial ownership in publication rights relating to the subject matter of the employment, he may be tempted to subordinate the interests of his client to his own anticipated pecuniary gain.

show what his instructions were, or what was the nature of the duty which the client expected him to perform. So if it became necessary for the attorney to bring an action against the client, the client's privilege could not prevent the attorney from disclosing what was essential as a means of obtaining or defending his own rights.'

"Mr. Jones, in his Commentaries on Evidence, 2d Ed., Vol. 5, § 2165, states the exception thus : 'It has frequently been held that the rule as to privileged communications does not apply when litigation arises between attorney and client to the extent that their communications are relevant to the issue. In such cases, if the disclosure of privileged communications becomes necessary to protect the attorney's rights, he is released from those obligations of secrecy which the law places upon him. He should not, however, disclose more than is necessary for his own protection. It would be a manifest injustice to allow the client to take advantage of the rule of exclusion as to professional confidence to the prejudice of his attorney, or that it should. be carried to the extent of depriving the attorney of the means of obtaining or defending his own rights. In such cases the attorney is exempted from the obligations of secrecy.' " *ABA Opinion* 250 (1943).

[1] *Cf.* ABA Canon 35.

"[A lawyer's] fiduciary duty is of the highest order and he must not represent interests adverse to those of the client. It is also true that because of his professional responsibility and the confidence and trust which his client may legitimately repose in him, he must adhere to a high standard of honesty, integrity and good faith in dealing with his client. He is not permitted to take advantage of his position or superior knowledge to impose upon the client; nor to conceal facts or law, nor in any way deceive him without being held responsible therefor." Smoot v. Lund, 13 Utah 2d 168, 172, 369 P.2d 933, 936 (1962).

"When a client engages the services of a lawyer in a given piece of business he is entitled to feel that, until that business is finally disposed of in some manner, he has the undivided loyalty of the one upon whom he looks as his advocate and champion. If, as in this case, he is sued and his home attached by his own attorney, who is representing him in another matter, all feeling of loyalty is necessarily destroyed, and the profession is exposed to the charge that it is interested only in money." Grievance Comm. v. Rattner, 152 Conn. 59, 65, 203 A.2d 82, 84 (1964).

"One of the cardinal principles confronting every attorney in the representation of a client is the requirement of complete loyalty and service in good faith to the best of his ability. In a criminal case the client is entitled to a fair trial, but not a perfect one. These are fundamental requirements of due process under the Fourteenth Amendment. . . . The same principles are applicable in Sixth Amendment cases (not pertinent herein) and suggest that an attorney should have no conflict of interest and that he must devote his full and faithful efforts toward the defense of his client." Johns v. Smyth, 176 F.Supp. 949, 952 (E.D.Va.1959), *modified,* United States ex rel. Wilkins v. Banmiller, 205 F.Supp. 123, 128 n. 5 (E.D.Pa.1962), *aff'd,* 325 F.2d 514 (3d Cir. 1963), *cert. denied,* 379 U.S. 847, 13 L.Ed.2d 51, 85 S.Ct. 87 (1964).

[2] "Attorneys must not allow their private interests to conflict with those of their clients. . . . They owe their entire devotion to the interests of their clients." United States v. Anonymous, 215 F.Supp. 111, 113 (E.D. Tenn.1963).

"[T]he court [below] concluded that a firm may not accept any action against a person whom they are presently representing even though there is no relationship between the two cases. In arriving at this conclusion, the court cited an opinion of the Committee on Professional Ethics of the New York County Lawyers' Association which stated in part : 'While under the circumstances * * * there may be no actual conflict of interest * * * "maintenance of public confidence in the Bar requires an attorney who has accepted representation of a client to decline, while representing such client, any employment from an adverse party in any matter even though wholly unrelated to the original retainer." See Question and. Answer No. 350, N.Y. County L. Ass'n, Questions and Answer No. 450 (June 21, 1956).' " Grievance Comm. v. Rattner, 152 Conn. 59, 65, 203 A.2d 82, 84 (1964).

For example, a lawyer in a criminal case who obtains from his client television, radio, motion picture, newspaper, magazine, book, or other publication rights with respect to the case may be influenced, consciously or unconsciously, to a course of conduct that will enhance the value of his publication rights to the prejudice of his client. To prevent these potentially differing interests, such arrangements should be scrupulously avoided prior to the termination of all aspects of the matter giving rise to the employment, even though his employment has previously ended.

EC 5-5 A lawyer should not suggest to his client that a gift be made to himself or for his benefit. If a lawyer accepts a gift from his client, he is peculiarly susceptible to the charge that he unduly influenced or overreached the client. If a client voluntarily offers to make a gift to his lawyer, the lawyer may accept the gift, but before doing so, he should urge that his client secure disinterested advice from an independent, competent person who is cognizant of all the circumstances. [3] Other than in exceptional circumstances, a lawyer should insist that an instrument in which his client desires to name him beneficially be prepared by another lawyer selected by the client.4

EC 5-6 A lawyer should not consciously influence a client to name him as executor, trustee, or lawyer in an instrument. In those cases where a client wishes to name his lawyer as such, care should be taken by the lawyer to avoid even the appearance of impropriety.5

EC 5-7 The possibility of an adverse effect upon the exercise of free judgment by a lawyer on behalf of his client during litigation generally makes it undesirable for the lawyer to acquire a proprietary interest in the cause of his client or otherwise to become financially interested in the outcome of the litigation. [6] However, it is not improper for a lawyer to protect his right to collect a fee for his services by the assertion of legally permissible liens, even though by doing so he may acquire an interest in the outcome of litigation. Although a contingent fee arrangement [7] gives a lawyer a financial interest in the outcome of litigation, a reasonable contingent fee is permissible in civil cases because it may be the only means by which a layman can obtain the services of a lawyer of his choice. But a lawyer, because he is in a better position to evaluate a cause of action, should enter into a contingent fee arrangement only in those instances where the arrangement will be beneficial to the client.

EC 5-8 A financial interest in the outcome of litigation also results if monetary advances are made by the lawyer to his client. [8] Although this assistance generally is not encouraged, there are instances when it is not improper to make loans to a client. For example, the advancing or guaranteeing of payment of the costs and expenses of litigation by a lawyer may be the only way a client can enforce his cause of action, [9] but the ultimate liability for such costs and expenses must be that of the client.

EC 5-9 Occasionally a lawyer is called upon to decide in a particular case whether he will be a witness or an advocate. If a lawyer is both counsel and witness, he becomes more easily impeachable for interest and thus may be a less effective witness. Conversely, the opposing counsel may be handicapped in challenging the credibility of the lawyer when the lawyer also appears as an advocate in the case. An advocate who becomes a witness is in the unseemly and ineffective position of arguing his own credibility. The roles of an advocate and of a witness are inconsistent; the function of an advocate is to advance or argue the cause of another, while that of a witness is to state facts objectively.

EC 5-10 Problems incident to the lawyer-witness relationship arise at different stages; they relate

[3] "Courts of equity will scrutinize with jealous vigilance transactions between parties occupying fiduciary relations toward each other. . . . A deed will not be held invalid, however, if made by the grantor with full knowledge of its nature and effect, and because of the deliberate, voluntary and intelligent desire of the grantor. . . . Where a fiduciary relation exists, the burden of proof is on the grantee or beneficiary of an instrument executed during the existence of such relationship to show the fairness of the transaction, that it was equitable and just and that it did not proceed from undue influence. . . . The same rule has application where an attorney engages in a transaction with a client during the existence of the relation and is benefited thereby. . . . Conversely, an attorney is not prohibited from dealing with his client or buying his property, and such contracts, if open, fair and honest, when deliberately made, are as valid as contracts between other parties. . • . [I]mportant factors in determining whether a transaction is fair include a showing by the fiduciary (1) that he made a full and frank disclosure of all the relevant information that he had ; (2) that the consideration was adequate ; and (3) that the principal had independent advice before completing the transaction." McFall v. Braden, 19 I11.2d 108, 117-18, 166 N.E.2d 46, 52 (1960).

4 See State ex rel. Nebraska State Bar Ass'n v. Richards, 165 Neb. 80, 94-95, 84 N.W.2d 136, 146 (1957).

*See* ABA Canoe 9.

[6] *See* ABA Canon 10.

[7] *See* Code of Professional Responsibility, EC 2-20.

8 *See* ABA Canon 42.

[9] *"Rule 3a. . . .* A member of the State Bar shall not directly or indirectly pay or agree to pay, or represent or sanction the representation that he will pay, medical, hospital or nursing bills or other personal expenses incurred by or for a client, prospective or existing ; provided this rule shall not prohibit a member

"(1) with the consent of the client, from paying or agreeing to pay to third persons such expenses from funds collected or to be collected for the client; or

(2) after he has been employed, from lending money to his client upon the client's promise in writing to repay such loan; or

(3) from advancing the costs of prosecuting or defending a claim or action. Such costs within the meaning of this subparagraph (3) include all taxable costs or disbursements, costs or investigation and costs of obtaining and presenting evidence." Cal. Business and Professions Code § 6076 (West Supp.1967).

either to whether a lawyer should accept employment or should withdraw from employment. [10] Regardless of when the problem arises, his decision is to be governed by the same basic considerations. It is not objectionable for a lawyer who is a potential witness to be an advocate if it is unlikely that he will be called as a witness because his testimony would be merely cumulative or if his testimony will relate only to an uncontested issue.11 In the exceptional situation where it will be manifestly unfair to the client for the lawyer to refuse employment or to withdraw when he will likely be a witness on a contested issue, he may serve as advocate even though he may be a witness. [12] In making such decision, he should determine the personal or financial sacrifice of the client that may result from his refusal of employment or withdrawal therefrom, the materiality of his testimony, and the effectiveness of his representation in view of his personal involvement. In weighing these factors, it should be clear that refusal or withdrawal will impose an unreasonable hardship upon the client before the lawyer accepts or continues the employment. [13] Where the question arises, doubts should be resolved in favor of the lawyer testifying and against his becoming or continuing as an advocate.'4

EC 5-11 A lawyer should not permit his personal interests to influence his advice relative to a suggestion by his client that additional counsel be employed. [15] In like manner, his personal interests should not deter him from suggesting that additional counsel be employed; on the contrary, he should be alert to the desirability of recommending additional counsel when, in his judgment, the proper representation of his client requires it. However, a lawyer should advise his client not to employ additional counsel suggested by the client if the lawyer believes that such employment would be a disservice to the client, and he should disclose the reasons for his belief.

EC 5-12 Inability of co-counsel to agree on a matter vital to the representation of their client requires that their disagreement be submitted by them jointly to their client for his resolution, and the decision of the client shall control the action to be taken.16

EC 5-13 A lawyer should not maintain membership in or be influenced by any organization of employees that undertakes to prescribe, direct, or suggest when or how he should fulfill his professional obligations to a person or organization that employs him as a lawyer. Although it is not necessarily improper for a lawyer employed by a corporation or similar entity to be a member of an organization of employees, he should be vigilant to safeguard his fidelity as a lawyer to his employer, free from outside influences.

*Interests of Multiple Clients*

EC 5-14 Maintaining the independence of professional judgment required of a lawyer precludes his acceptance or continuation of employment that will adversely affect his judgment on behalf of or dilute his loyalty to a client. [17] This problem arises whenever a lawyer is asked to represent two or more clients who may have *differing* interests, whether such interests be conflicting, inconsistent, diverse, or otherwise discordant.18

EC 5-15 If a lawyer is requested to undertake or to continue representation of multiple clients having potentially differing interests, he must weigh carefully the possibility that his judgment may be impaired or his loyalty divided if he accepts or

3.0 "When a lawyer knows, prior to trial, that he will be a necessary witness, except as to merely formal matters such as identification or custody of a document or the like, neither he nor his firm or associates should conduct the trial. If, during the trial, he discovers that the ends of justice require his testimony, he should, from that point on, if feasible and not prejudicial to his client's case, leave further conduct of the trial to other counsel. If circumstances do not permit withdrawal from the conduct of the trial, the lawyer should not argue the credibility of his own testimony." A *Code of Trial Conduct: Promulgated* by *the American College of Trial Lawyers,* 43 A.B.A.J. 223, 224-25 (1957).

11 *Cf.* Canon 19 : "When a lawyer is a witness for his client, except as to merely formal matters, such as the attestation or custody of an instrument and the like, he should leave the trial of the case to other counsel."

12 "It is the general rule that a lawyer may not testify in litigation in which he is an advocate unless circumstances arise which could not be anticipated and it is necessary to prevent a miscarriage of justice. In those rare cases where the testimony of an attorney is needed to protect his client's interests, it is not only proper but mandatory that it be forthcoming." Schwartz v. Wenger, 267 Minn. 40, 43-44, 124 N.W.2d 489, 492 (1963).

13 "The great weight of authority in this country holds that the attorney who acts as counsel and witness, in behalf of his client, in the same cause on a material matter, not of a merely formal character, and not in an emergency, but having knowledge that he would be required to be a witness in ample time to have secured other counsel and given up his service in the case, violates a highly important provision of the Code of Ethics and a rule of professional conduct, but does not commit a legal error in so testifying, as a result of which a new trial will be granted." Erwin M. Jennings Co. v. DiGenova, 107 Conn. 491, 499, 141 A. 866, 869 (1928).

14 "[C]ases may arise, and in practice often do arise, in which there would be a failure of justice should the attorney withhold his testimony. *in such a* case it would be a vicious professional sentiment which would deprive the client of the benefit of his attorney's testimony." Connolly v. Straw, 53 Wis. 645, 649, 11 N.W. 17, 19 (1881).

*But see* Canon 19: "Except when essential to the ends of justice, a lawyer should avoid testifying in court in behalf of his client."

15 *Cf.* ABA Canon 7.

16 *See* ABA Canon 7.

17 *See* ABA Canon 6; *cf. ABA Opinions* 261 (1944), 242 (1942), 142 (1935), and 30 (1931).

18 The ABA Canons speak of "conflicting interests" rather than "differing interests" but make no attempt to define such other than the statement in Canon 6: "Within the meaning of this canon, a lawyer represents conflicting interests when, in behalf of one client, it is his duty to contend for that which duty to another client requires him to oppose."

continues the employment. He should resolve all doubts against the propriety of the representation. A lawyer should never represent in litigation multiple clients with differing interests,[19] and there are few situations in which he would be justified in representing in litigation multiple clients with potentially differing interests. If a lawyer accepted such employment and the interests did become actually differing, he would have to withdraw from employment with likelihood of resulting hardship on the clients; and for this reason it is preferable that he refuse the employment initially. On the other hand, there are many instances in which a lawyer may properly serve multiple clients having potentially differing interests in matters not involving litigation. If the interests vary only slightly, it is generally likely that the lawyer will not be subjected to an adverse influence and that he can retain his independent judgment on behalf of each client; and if the interests become differing, withdrawal is less likely to have a disruptive effect upon the causes of his clients.

EC 5-16 In those instances in which a lawyer is justified in representing two or more clients having differing interests, it is nevertheless essential that each client be given the opportunity to evaluate his need for representation free of any potential conflict and to obtain other counsel if he so desires.[20] Thus before a lawyer may represent multiple clients, he should explain fully to each client the implications of the common representation and should accept or continue employment only if the clients consent.[21] If there are present other circumstances that might cause any of the multiple clients to question the undivided loyalty of the lawyer, he should also advise all of the clients of those circumstances.[22]

EC 5-17 Typically recurring situations involving potentially differing interests are those in which a lawyer is asked to represent co-defendants in a criminal case, co-plaintiffs in a personal injury case, an insured and his insurer,[23] and beneficiaries of the estate of a decedent. Whether a lawyer can fairly and adequately protect the interests of multiple clients in these and similar situations depends upon an analysis of each case. In certain circumstances, there may exist little chance of the judgment of the lawyer being adversely affected by the slight possibility that the interests will become actually differing; in other circumstances, the chance of adverse effect upon his judgment is not unlikely.

EC 5-18 A lawyer employed or retained by a corporation or similar entity owes his allegiance to the entity and not to a stockholder, director, officer, employee, representative, or other person connected with the entity. In advising the entity, a lawyer should keep paramount its interests and his professional judgment should not be influenced

[19] "Canon 6 of the Canons of Professional Ethics, adopted by the American Bar Association on September 30, 1937, and by the Pennsylvania Bar Association on January 7, 1938, provides in part that `It is unprofessional to represent conflicting interests, except by express consent of all concerned given after a full disclosure of the facts. Within the meaning of this Canon, a lawyer represents conflicting interests when, in behalf of one client, it is his duty to contend for that which duty to another client requires him to oppose.' The full disclosure required by this canon contemplates that the possibly adverse effect of the conflict be fully explained by the attorney to the client to be affected and by him thoroughly understood.

"The foregoing canon applies to cases where the circumstances are such that possibly conflicting interests may permissibly be represented by the same attorney. But manifestly, there are instances where the conflicts of interest are so critically adverse as not to admit of one attorney's representing both sides. Such is the situation which this record presents. No one could conscionably contend that the same attorney may represent both the plaintiff and defendant in an adversary action. Yet, that is what is being done in this case." Jedwabny v. Philadelphia Transportation Co., 390 Pa. 231, 235, 135 A.2d 252, 254 (1957), *cert. denied,* 355 U.S. 966, 2 L.Ed.2d 541, 78 S.Ct. 557 (1958).

[20] "Glasser wished the benefit of the undivided assistance of counsel of his own choice. We think that such a desire on the part of an accused should be respected. Irrespective of any conflict of interest, the additional burden of representing another party may conceivably impair counsel's *effectiveness.*

"To determine the precise degree of prejudice sustained. by Glasser as a result of the court's appointment of Stewart as counsel for Kretske is at once difficult and unnecessary. The right to have the assistance of counsel Is too fundamental and absolute to allow courts to indulge in nice calculations as to the amount of prejudice arising from its denial." Glasser v. United States, 315 U.S. 60, 75-76, 86 L.Ed. 680, 702 S.Ct. 457, 467 (1942).

[21] *See* ABA Canon 6.

[22] *Id.*

[23] *Cf. ABA Opinion* 282 (1950).

"When counsel, although paid by the casualty company, undertakes to represent the policyholder and files his notice of appearance, he owes to his client, the assured, an undeviating and single allegiance. His fealty embraces the requirement to produce in court all witnesses, fact and expert, who are available and necessary for the proper protection of the rights of his client. . . .

" . . . The Canons of Professional Ethics make it pellucid that there are not two standards, one applying to counsel privately retained by a client, and the other to counsel paid by an insurance carrier." American Employers Ins. Co. v. Goble Aircraft Specialties, 205 Misc. 1066, 1075, 131 N.Y.S.2d 393, 401 (1954), *motion to withdraw appeal granted,* 1 App.Div.2d 1008, 154 N.Y.S.2d 835 (1956).

"[C]ounsel, selected by State Farm to defend Dorothy Walker's suit for $50,000 damages, was apprised by Walker that his earlier version of the accident was untrue and that actually the accident occurred because he lost control of his car in passing a Cadillac just ahead. At that point, Walker's counsel should have refused to participate further in view of the conflict of interest between Walker and State Farm. . . . Instead he participated in the ensuing deposition of the Walkers, even took an *ex parte* sworn statement from Mr. Walker in order to advise State Farm what action it should take, and later used the statement against Walker in the District Court. This action appears to contravene an Indiana attorney's duty `at every peril to himself, to preserve the secrets of his client' . . .." State Farm Mut. Auto Ins. Co. v. Walker, 382 F.2d 548, 552 (1967), *cert. denied,* 389 U.S. 1045, 19 L.Ed. 2d 837, 88 S.Ct. 789 (1968).

by the personal desires of any person or organization. Occasionally a lawyer for an entity is requested by a stockholder, director, officer, employee, representative, or other person connected with the entity to represent him in an individual capacity; in such case the lawyer may serve the individual only if the lawyer is convinced that differing interests are not present.

EC 5-19 A lawyer may represent several clients whose interests are not actually or potentially differing. Nevertheless, he should explain any circumstances that might cause a client to question his undivided loyalty.[24] Regardless of the belief of a lawyer that he may properly represent multiple clients, he must defer to a client who holds the contrary belief and withdraw from representation of that client.

EC 5-20 A lawyer is often asked to serve as an impartial arbitrator or mediator in matters which involve present or former clients. He may serve in either capacity if he first discloses such present or former relationships. After a lawyer has undertaken to act as an impartial arbitrator or mediator, he should not thereafter represent in the dispute any of the parties involved.

*Desires of Third Persons*

EC 5-21 The obligation of a lawyer to exercise professional judgment solely on behalf of his client requires that he disregard the desires of others that might impair his free judgment.[25] The desires of a third person will seldom adversely affect a lawyer unless that person is in a position to exert strong economic, political, or social pressures upon the lawyer. These influences are often subtle, and a lawyer must be alert to their existence. A lawyer subjected to outside pressures should make full disclosure of them to his client; 26 and if he or his client believes that the effectiveness of his representation has been or will be impaired thereby, the lawyer should take proper steps to withdraw from representation of his client.

EC 5-22 Economic, political, or social pressures by third persons are less likely to impinge upon the independent judgment of a lawyer in a matter in which he is compensated directly by his client and his professional work is exclusively with his client. On the other hand, if a lawyer is compensated from a source other than his client, he may feel a sense of responsibility to someone other than his client.

EC 5-23 A person or organization that pays or furnishes lawyers to represent others possesses a potential power to exert strong pressures against the independent judgment of those lawyers. Some employers may be interested in furthering their own economic, political, or social goals without regard to the professional responsibility of the lawyer to his individual client. Others may be far more concerned with establishment or extension of legal principles than in the immediate protection of the rights of the lawyer's individual client. On some occasions, decisions on priority of work may be made by the employer rather than the lawyer with the result that prosecution of work already undertaken for clients is postponed to their detriment. Similarly, an employer may seek, consciously or unconsciously, to further *its* own economic interests through the actions of the lawyers employed by it. Since a lawyer must always be free to exercise his professional judgment without regard to the interests or motives of a third person, the lawyer who is employed by one to represent another must constantly guard against erosion of his professional freedom.27

EC 5-24 To assist a lawyer in preserving his professional independence, a number of courses are available to him. For example, a lawyer should not practice with or in the form of a professional legal corporation, even though the corporate form is permitted by law,[28] if any director, officer, or stockholder of it is a non-lawyer. Although a lawyer may be employed by a business corporation with non-lawyers serving as directors or officers, and they necessarily have the right to make decisions of business policy, a lawyer must decline to accept direction of his professional judgment from any layman. Various types of legal aid of-

[24] *See* ABA Canon 6.

[25] *See* ABA Canon 35.

"Objection to the intervention of a lay intermediary, who may control litigation or otherwise interfere with the rendering of legal services in a confidential relationship, . . . derives from the element of pecuniary gain. Fearful of dangers thought to arise from that element, the courts of several States have sustained regulations aimed at these activities. We intimate no view one way or the other as to the merits of those decisions with respect to the particular arrangements against which they are directed. It is enough that the superficial resemblance in form between those arrangements and that at bar cannot obscure the vital fact that here the entire arrangement employs constitutionally privileged means of expression to secure constitutionally guaranteed civil rights." NAACP v. Button, 371 U.S. 415, 441-42, 9 L.Ed.2d 405, 423-24, 83 S.Ct. 328, 342-43 (1963).

[28] *Cf.* ABA Canon 38.

[27] "Certainly it is true that 'the professional relationship between an attorney and his client is highly personal, involving an intimate appreciation of each individual client's particular problem.' And this Committee does not condone practices which interfere with that relationship. However, the mere fact the lawyer is actually paid by some entity other than the client does not affect that relationship, so long as the lawyer is selected by and is directly responsible to the client. See Informal Opinions 469 and 679. Of course, as the latter decision points out, there must be full disclosure of the arrangement by the attorney to the client. . . " *ABA* Opinion 320 (1968).

"[A] third party may pay the cost of legal services as long as control remains in the client and the responsibility of the lawyer is solely to the client. Informal Opinions 469 ad *[sic]* 679. *See also Opinion* 237." *Id.*

[28] *ABA* Opinion 303 (1961) recognized that "[s]tatutory provisions now exist in several states which are designed to make [the practice of law in a form that will be classified as a corporation for federal income tax purposes] legally possible, either as a result of lawyers incorporating or forming associations with various corporate characteristics."

fices are administered by boards of directors composed of lawyers and laymen. A lawyer should not accept employment from such an organization unless the board sets only broad policies and there is no interference in the relationship of the lawyer and the individual client he serves. Where a lawyer is employed by an organization, a written agreement that defines the relationship between him and the organization and provides for his independence is desirable since it may serve to prevent misunderstanding as to their respective roles. Although other innovations in the means of supplying legal counsel may develop, the responsibility of the lawyer to maintain his professional independence remains constant, and the legal profession must insure that changing circumstances do not result in loss of the professional independence of the lawyer.

## DISCIPLINARY RULES

DR 5-101 Refusing Employment When the Interests of the Lawyer May Impair His Independent Professional Judgment.

(A) Except with the consent of his client after full disclosure, a lawyer shall not accept employment if the exercise of his professional judgment on behalf of his client will be or reasonably may be affected by his own financial, business, property, or personal interests.[29]

(B) A lawyer shall not accept employment in contemplated or pending litigation if he knows or it is obvious that he or a lawyer in his firm ought to be called as a witness, except that he may undertake the employment and he or a lawyer in his firm may testify:

(1) If the testimony will relate solely to an uncontested matter.

(2) If the testimony will relate solely to a matter of formality and there is no reason to believe that substantial evidence will be offered in opposition to the testimony.

(3) If the testimony will relate solely to the nature and value of legal services rendered in the case by the lawyer or his firm to the client.

(4) As to any matter, if refusal would work a substantial hardship on the client because of the distinctive value of the lawyer or his firm as counsel in the particular case.

DR 5-102 Withdrawal as Counsel When the Lawyer Becomes a Witness.[30]

(A) If, after undertaking employment in contemplated or pending litigation, a lawyer learns or it is obvious that he or a lawyer in his firm ought to be called as a witness on behalf of his client, he shall withdraw from the conduct of the trial and his firm, if any, shall not continue representation in the trial, except that he may continue the representation and he or a lawyer in his firm may testify in the circumstances enumerated in DR 5-101(B)(1) through (4).

(B) If, after undertaking employment in contemplated or pending litigation, a lawyer learns or it is obvious that he or a lawyer in his firm may be called as a witness other than on behalf of his client, he may continue the representation until it is apparent that his testimony is or may be prejudicial to his client.[31]

DR 5-103 Avoiding Acquisition of Interest in Litigation.

(A) A lawyer shall not acquire a proprietary interest in the cause of action or subject matter of litigation he is conducting for a client,[32] except that he may:

(1) Acquire a lien granted by law to secure his fee or expenses.

(2) Contract with a client for a reasonable contingent fee in a civil case.[33]

(B) While representing a client in connection with contemplated or pending litigation, a lawyer shall not advance or guarantee financial as-

[29] *Cf.* ABA Canon 6 and *ABA Opinions* 181 (1938), 104 (1934), 103 (1933), 72 (1932), 50 (1931), 49 (1931), and 33 (1931).

"New York County [Opinion] 203. . . . [A lawyer] should not advise a client to employ an investment company in which he is interested, without informing him of this." Drinker, LEGAL ETHICS 956 (1953).

"In *Opinions* 72 and 49 this Committee held : The relations of partners in a law firm are such that neither the firm nor any member or associate thereof, may accept any professional employment which any member of the firm cannot properly accept.

"In *Opinion* 16 this Committee held that a member of a law firm could not represent a defendant in a criminal case which was being prosecuted by another member of the firm who was public prosecuting attorney. The Opinion stated that it was clearly unethical for one member of the firm to oppose the interest of the state while another member represented those interests . . .. Since the prosecutor himself could not represent both the public and the defendant, no member of his law firm could either." *ABA Opinion* 296 (1959).

[30] **cf.** ABA Canon 19 and *ABA Opinions* 220 (1941), 185 (1938), 50 (1931), and 33 (1931) ; *but* **cf.** Erwin M. Jennings Co. v. DiGenova, 107 Conn. 491, 498-99, 141 A. 866, 868 (1928).

[31] "This Canon [19] *of Ethics* needs no elaboration to be applied to the facts here. Apparently, the object of this precept is to avoid putting a lawyer in the obviously embarrassing predicament of testifying and then having to argue the credibility and effect of his own testimony. It was not designed to permit a lawyer to call opposing counsel as a witness and thereby disqualify him as counsel." Galarowicz v. Ward, 119 Utah 611, 620, 230 P.2d 576, 580 (1951).

[32] ABA Canon 10 and *ABA Opinions* 279 (1949), 246 (1942), and 176 (1938).

[33] See Code of Professional Responsibility, DR 2-106(C).

prevent prospective jurors from being impartial at the outset of the trial [54] and may also interfere with the obligation of jurors to base their verdict solely upon the evidence admitted in the tria1.55

"Court proceedings are held for the solemn purpose of endeavoring to ascertain the truth which is the *sine qua non* of a fair trial. Over the centuries Anglo-American courts have devised careful safeguards by rule and otherwise to protect and facilitate the performance of this high function. As a result, at this time those safeguards do not permit the televising and photographing of a criminal trial, save in two States and there only under restrictions. The federal courts prohibit it by specific rule. This is weighty evidence that our concepts of a fair trial do not tolerate such an indulgence. We have always held that the atmosphere essential to the preservation of a fair trial—the most fundamental of all freedoms—must be maintained at all costs." Estes v. State of Texas, 381 *U.S.* 532, 540, 14 L.Ed.2d 543, 549, 85 S.Ct. 1628, 1631-32 (1965), *rehearing denied,* 382 U.S. 875, 15 L.Ed.2d 118, 86 S.Ct. 18 (1965).

[54] "Pretrial can create a major problem for the defendant in a criminal case. Indeed, it may be more harmful than publicity during the trial for it may well set the community opinion as to guilt or innocence. . . . The trial witnesses present at the hearing, as well as the original jury panel, were undoubtedly made aware of the peculiar public importance of the case by the press and television coverage being provided, and by the fact that they themselves were televised live and their pictures rebroadcast on the evening show." *Id.,* 381 U.S. at 536-37, 14 L.Ed.2d at 546-47, 85 S.Ct. at 1629-30.

[55] "The undeviating rule of this Court was expressed by Mr. Justice Holmes over half a century ago in Patterson v. Colorado, 205 U.S. 454, 462 (1907) :

> The theory of our system is that the conclusions to be reached in a case will be induced only by evidence and argument in open court, and not by any outside influence, whether of private talk or public print."

Sheppard v. Maxwell, 384 U.S. 333, 351, 16 L.Ed.2d 600, 614, 86 S.Ct. 1507, 1516 (1966).

"The trial judge has a large discretion in ruling on the issue of prejudice resulting from the reading by jurors of news articles concerning the trial. . . . Generalizations beyond that statement are not profitable, because each case must turn on its special facts. We have here the exposure of jurors to information of a character which the trial judge ruled was so prejudicial it could not be directly offered as evidence. The prejudice to the defendant is almost certain to be as great when that evidence reaches the jury through news accounts as when it is a part of the prosecution's evidence. . . . It may indeed be greater for it is then not tempered by protective procedures." Marshall v. United States, 360 U.S. 310, 312-13, 3 L.Ed.2d 1250, 1252, 79 S.Ct. 1171, 1173 (1959).

"The experienced trial lawyer knows that an adverse public opinion is a tremendous disadvantage to the defense of his client. Although grand jurors conduct their deliberations in secret, they are selected from the body of the public. They are likely to know what the general public knows and to reflect the public attitude. Trials are open to the public, and aroused public opinion respecting the merits of a legal controversy creates a court room atmosphere which, without any vocal expression in the presence of the petit jury, makes itself felt and has its effect upon the action of the petit jury. Our fundamental concepts of justice and our American sense of fair play require that the petit jury shall be composed of persons with fair and impartial minds and without preconceived views as to the merits of the controversy, and that it shall determine the issues presented to it solely upon the evidence adduced at the trial and according to the law given in the instructions of the trial judge.

The release by a lawyer of out-of-court statements regarding an anticipated or pending trial may improperly affect the impartiality of the tribunal.56 For these reasons, standards for permissible and prohibited conduct of a lawyer with respect to trial publicity have been established.

EC 7-34 The impartiality of a public servant in our legal system may be impaired by the receipt of gifts or loans. A lawyer, [57] therefore, is never justified in making a gift or a loan to a judge, a hearing officer, or an official or employee of a tribunal.58

EC 7-35 All litigants and lawyers should have access to tribunals on an equal basis. Generally, in adversary proceedings a lawyer should not communicate with a judge relative to a matter pending before, or which is to be brought before, a tribunal over which he presides in circumstances which might have the effect or give the appearance of granting undue advantage to one party.59 For example, a lawyer should not communicate with a tribunal by a writing unless a copy thereof is promptly delivered to opposing counsel or to the adverse party if he is not represented by a lawyer. Ordinarily an oral communication by a lawyer with a judge or hearing officer should be made only upon adequate notice to opposing counsel, or, if there is none, to the opposing party. A. lawyer should not condone or lend himself to private importunities by another with a judge or hearing officer on behalf of himself or his client.

EC 7-36 Judicial hearings ought to be conducted through dignified and orderly procedures designed to protect the rights of all parties. Although a lawyer has the duty to represent his client zealous-

"While we may doubt that the effect of public opinion would sway or bias the judgment of the trial judge in an equity proceeding, the defendant should not be called upon to run that risk and the trial court should not have his work made more difficult by any dissemination of statements to the public that would be calculated to create a public demand for a particular judgment in a prospective or pending case." *ABA Opinion* 199 (1940).

*Cf.* Estes v. State of Texas, 381 U.S. 532, 544-45, 14 L. Ed.2d 543, 551, 85 S.Ct. 1628, 1634 (1965), *rehearing denied,* 381 U.S. 875, 15 L.Ed.2d 118, 86 S.Ct. 18 (1965).

[56] *See* ABA Canon 20.

[57] Canon 3 observes that a lawyer "deserves rebuke and denunciation for any device or attempt to gain from a Judge special personal consideration or favor."

*See* ABA Canon 32.

[58] "*Judicial Canon* 32 provides :

" 'A judge should not accept any presents or favors from litigants, or from lawyers practicing before him or from others whose interests are likely to be submitted to him for judgment.'

"The language of this Canon is perhaps broad enough to prohibit campaign contributions by lawyers, practicing before the court upon which the candidate hopes to sit. However, we do not think it was intended to prohibit such contributions when the candidate is obligated, by force of circumstances over which he has no control, to conduct a campaign, the expense of which exceeds that which he should reasonably be expected to personally bear!" *ABA Opinion* 226 (1941).

[59] *See* ABA Canons 3 and 32.

ly, he should not engage in any conduct that offends the dignity and decorum of proceedings.60 While maintaining his independence, a lawyer should be respectful, courteous, and above-board in his relations with a judge or hearing officer before whom he appears.[61] He should avoid undue solicitude for the comfort or convenience of judge or jury and should avoid any other conduct calculated to gain special consideration.

EC 7-37 In adversary proceedings, clients are litigants and though ill feeling may exist between clients, such ill feeling should not influence a lawyer in his conduct, attitude, and demeanor towards opposing lawyers.[62] A lawyer should not make unfair or derogatory personal reference to opposing counsel. Haranguing and offensive tactics by lawyers interfere with the orderly administration of justice and have no proper place in our legal system.

EC 7-38 A lawyer should be courteous to opposing counsel and should accede to reasonable requests regarding court proceedings, settings, continuances, waiver of procedural formalities, and similar matters which do not prejudice the rights of his client.[63] He should follow local customs of courtesy or practice, unless he gives timely notice to opposing counsel of his intention not to do so.[64] A lawyer should be punctual in fulfilling all professional commitments.65

EC 7-39 In the final analysis, proper functioning of the adversary system depends upon cooperation between lawyers and tribunals in utilizing procedures which will preserve the impartiality of tribunals and make their decisional processes prompt and just, without impinging upon the obligation of lawyers to represent their clients zealously within the framework of the law.

## DISCIPLINARY RULES

DR 7-101 Representing a Client Zealously.

(A) A lawyer shall not intentionally: [66]

(1) Fail to seek the lawful objectives of his client through reasonably available means [67] permitted by law and the Disciplinary Rules, except as provided by DR 7-101(B). A lawyer does not violate this Disciplinary Rule, however, by acceding to reasonable requests of opposing counsel which do not prejudice the rights of his client, by being punctual in fulfilling all professional commitments, by avoiding offensive tactics, or by treating with courtesy and consideration all persons involved in the legal process.

(2) Fail to carry out a contract of employment entered into with a client for professional services, but he may withdraw as permitted under DR 2-110, DR 5-102, and DR 5-105.

(3) Prejudice or damage his client during the course of the professional relationship [68] except as required under DR 7-102(B).

(B) In his representation of a client, a lawyer may:

(1) Where permissible, exercise his professional judgment to waive or fail to assert a right or position of his client.

(2) Refuse to aid or participate in conduct that he believes to be unlawful, even though there is some support for an argument that the conduct is legal.

DR 7-102 Representing a Client Within the Bounds of the Law.

(A) In his representation of a client, a lawyer shall not:

(1) File a suit, assert a position, conduct a defense, delay a trial, or take other action on behalf of his client when he knows or when it is obvious that such action would serve merely to harass or maliciously injure another.69

(2) Knowingly advance a claim or defense that is unwarranted under existing law, except that he may advance such claim or defense if it can be supported by good faith argument for an extension, modification, or reversal of existing law.

(3) Conceal or knowingly fail to disclose that which he is required by law to reveal.

(4) Knowingly use perjured testimony or false evidence.70

(5) Knowingly make a false statement of law or fact.

(6) Participate in the creation or preservation of evidence when he knows or it is obvious that the evidence is false.

(7) Counsel or assist his client in conduct that the lawyer knows to be illegal or fraudulent.

(8) Knowingly engage in other illegal conduct or conduct contrary to a Disciplinary Rule.

(B) A lawyer who receives information clearly establishing that:

(1) His client has, in the course of the representation, perpetrated a fraud upon a person or tribunal shall promptly call

[60] *Cf.* ABA Canon 18.

[61] *See* ABA Canons 1 and 3.

[62] *See* ABA Canon 17.

[63] *See* ABA Canon 24.

[64] *See* ABA Canon 25.

[65] *See* ABA Canon 21.

[66] *See* ABA Canon 15.

[67] *See* ABA Canons 5 and 15 *cf.* ABA Canons 4 and 32.

[68] *Cf.* ABA Canon 24.

[69] *sel* ABA Canon 30.

[70] *Cf.* ABA Canons 22 and 29.

upon his client to rectify the same, and if his client refuses or is unable to do so, he shall reveal the fraud to the affected person or tribunal:a

(2) A person other than his client has perpetrated a fraud upon a tribunal shall promptly reveal the fraud to the tribunal 12

DR 7-103 Performing the Duty of Public Prosecutor or Other Government Lawyer.73

(A) A public prosecutor or other government lawyer shall not institute or cause to be instituted criminal charges when he knows or it is obvious that the charges are not supported by probable cause.

(B) A public prosecutor or other government lawyer in criminal litigation shall make timely disclosure to counsel for the defendant, or to the defendant if he has no counsel, of the existence of evidence, known to the prosecutor or other government lawyer, that tends to negate the guilt of the accused, mitigate the degree of the offense, or reduce the punishment.

DR 7-104 Communicating With One of Adverse Interest.74

(A) During the course of his representation of a client a lawyer shall not:

(1) Communicate or cause another to communicate on the subject of the representation with a party he knows to be represented by a lawyer in that matter unless he has the prior consent of the lawyer representing such other party [75] or is authorized by law to do so.

(2) Give advice to a person who is not represented by a lawyer, other than the advice to secure counsel,[76] if the interests of such person are or have a reasonable possibility of being in conflict with the interests of his client.77

DR 7-105 Threatening Criminal Prosecution.

(A) A lawyer shall not present, participate in presenting, or theaten to present criminal charges solely to obtain an advantage in a civil matter.

DR 7-106 Trial Conduct.

(A) A lawyer shall not disregard or advise his client to disregard a standing rule of a tribunal or a ruling of a tribunal made in the course of a proceeding, but he may take appropriate steps in good faith to test the validity of such rule or ruling.

(B) In presenting a matter to a tribunal, a lawyer shall disclose: [78]

(1) Legal authority in the controlling jurisdiction known to him to be directly adverse to the position of his client and which is not disclosed by opposing cotmse1.79

(2) Unless privileged or irrelevant, the identities of the clients he represents and of the persons who employed him 80

71 *See* ABA Canon 41; *cf.* Hinds v. State Bar, 19 Ca1.2d 87, 92-93, 119 P.2d 134, 137 (1941) ; *but* see *ABA Opinion* 287 (1953) and Texas Canon 38. *Also see* Code of Professional Responsibility, DR 4-101(C) (2).

72 *See* Precision Inst. Mfg. Co. v. Automotive M. M. Co., 324 U.S. 806, 89 L.Ed. 1381, 65 S.Ct. 993 (1945).

73 *Cf.* ABA Canon 5.

74 *"Rule 12. . . .* A member of the State Bar shall not communicate with a party represented by counsel upon a subject of controversy, in the absence and without the consent of such counsel. This rule shall not apply to communications with a public officer, board, committee or body." Cal.Business and Professions Code § 6076 (West 1962).

75 *See* ABA Canon 9; *cf. ABA Opinions* 124 (1934), 108 (1934), 95 (1933), and 75 (1932) ; *also see* In re Schwabe, 242 Or. 169, 174-75, 408 P.2d 922, 924 (1965).

"It is clear from the earlier opinions of this committee that Canon 9 is to be construed literally and does not allow a communication with an opposing party, without the consent of his counsel, though the purpose merely be to investigate the facts. Opinions *117, 95, 66," ABA Opinion* 187 (1938).

76 *Cf. ABA Opinion* 102 (1933).

77 *Cf.* ABA Canon 9 and *ABA Opinion* 58 (1931).

78 *Cf.* Note, 38 Texas L.Rev. 107, 108-09 (1959).

79 "In the brief summary in the 1947 edition of the Committee's decisions (p. 17), *Opinion 146* was thus summarized : *Opinion 146—A* lawyer should disclose to the court a decision directly adverse to his client's case that is unknown to his adversary.

"We would not confine the Opinion to 'controlling authorities'—i.e., those decisive of the pending case—but, in accordance with the tests hereafter suggested, would apply it to a decision directly adverse to any proposition of law on which the lawyer expressly relies, which would reasonably be considered important by the judge sitting on the case.

". . . The test in every case should *be:* Is the decision which opposing counsel has overlooked one which the court should clearly consider in deciding the case? Would a reasonable judge properly feel that a lawyer who advanced, as the law, a proposition adverse to the undisclosed decision, was lacking in candor and fairness to him? Might the judge consider himself misled by an implied representation that the lawyer knew of no adverse authority?" *ABA Opinion* 280 (1949).

80 "The authorities are substantially uniform against any privilege as applied to the fact of retainer or identity of the client. The privilege is limited to confidential communications, and a retainer is not a confidential communication, although it cannot come into existence without some communication between the attorney and the—at that stage prospective—client." United States v. Pape, 144 F.2d 778, 782 (2d Cir. 1944), *cert. denied,* 323 U.S. 752, 89 L.Ed.2d 602, 65 S.Ct. 86 (1944).

"To be sure, there may be circumstances under which the identification of a client may amount to the prejudicial disclosure of a confidential communication, as where the

(C) In appearing in his professional capacity before a tribunal, a lawyer shall not:

(1) State or allude to any matter that he has no reasonable basis to believe is relevant to the case or that will not be supported by admissible evidence.[81]

(2) Ask any question that he has no reasonable basis to believe is relevant to the case and that is intended to degrade a witness or other person.[82]

(3) Assert his personal knowledge of the facts in issue, except when testifying as a witness.

(4) Assert his personal opinion as to the justness of a cause, as to the credibility of a witness, as to the culpability of a civil litigant, or as to the guilt or innocence of an accused; [83] but he may argue, on his analysis of the evidence, for any position or conclusion with respect to the matters stated herein.

(5) Fail to comply with known local customs of courtesy or practice of the bar or a particular tribunal without giving to opposing counsel timely notice of his intent not to comply.[84]

(6) Engage in undignified or discourteous conduct which is degrading to a tribunal.

(7) Intentionally or habitually violate any established rule of procedure or of evidence.

DR 7-107 Trial Publicity.[85]

(A) A lawyer participating in or associated with the investigation of a criminal matter shall not make or participate in making an extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication and that does more than state without elaboration:

(1) Information contained in a public record.

(2) That the investigation is in progress.

(3) The general scope of the investigation including a description of the offense and, if permitted by law, the identity of the victim.

(4) A request for assistance in apprehending a suspect or assistance in other matters and the information necessary thereto.

(5) A warning to the public of any dangers.

(B) A lawyer or law firm associated with the prosecution or defense of a criminal matter shall not, from the time of the filing of a complaint, information, or indictment, the issuance of an arrest warrant, or arrest until the commencement of the trial or disposition

substance of a disclosure has already been revealed but not its source." Colton v. United States, 306 F.2d 633, 637 (2d Cir. 1962).

81 See ABA Canon 22; *cf.* ABA Canon 17.

"The rule allowing counsel when addressing the jury the widest latitude in discussing the evidence and presenting the client's theories falls far short of authorizing the statement by counsel of matter not in evidence, or indulging in argument founded on no proof, or demanding verdicts for purposes other than the just settlement of the matters at issue between the litigants, or appealing to prejudice or passion. The rule confining counsel to legitimate argument is not based on etiquette, but on justice. Its violation is not merely an overstepping of the bounds of propriety, but a violation of a party's rights. The jurors must determine the issues upon the evidence. Counsel's address should help them do this, not tend to lead them astray." Cherry Creek Nat. Bank v. Fidelity & Cas. Co., 207 App.Div. 787, 790-91, 202 N.Y.S. 611, 614 (1924).

82 *Cf.* ABA Canon 18.

"§ 6068. • . . It is the duty of an attorney :

"(f) To abstain from all offensive personality, and to advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which he is charged." Cal.Business and Professions Code § 6068 (West 1962).

83 "The record in the case at bar was silent concerning the qualities and character of the deceased. It is especially improper, in addressing the jury in a murder case, for the prosecuting attorney to make reference to his knowledge of the good qualities of the deceased where there is no evidence in the record bearing upon his character. . . . A prosecutor should never inject into his argument evidence not introduced at the trial." People v. Dukes, 12 I11.2d 334, 341, 146 N.E.2d 14, 17-18 (1957).

84 "A lawyer should not ignore known customs or practice of the Bar or of a particular Court, even when the law permits, without giving timely notice to the opposing counsel." ABA Canon 25.

85 The provisions of Sections (A), (B), (C), and (D) of this Disciplinary Rule incorporate the fair trial-free press standards which apply to lawyers as adopted by the ABA. House of Delegates, Feb. 19, 1968, upon the recommendation of the Fair Trial and Free Press Advisory Committee of the ABA Special Committee on Minimum Standards for the Administration of Criminal Justice.

*Cf.* ABA Canon 20; *see generally* ABA Advisory Committee on Fair Trial and Free Press, Standards Relating to Fair Trial and Free Press (1966).

"From the cases coming here we note that unfair and prejudicial news comment on pending trials has become increasingly prevalent. Due process requires that the accused receive a trial by an impartial jury free from outside influences. Given the pervasiveness of modern communications and the difficulty of effacing prejudicial publicity from the minds of the jurors, the trial courts must take strong measures to ensure that the balance is never weighed against the accused. And appellate tribunals have the duty to make an independent evaluation of the circumstances. Of course, there is nothing that prescribes the press from reporting events that transpire in the courtroom. But where there is a reasonable likelihood that prejudicial news prior to trial will prevent a fair trial, the judge should continue the case until the threat abates, or transfer it to another county not so permeated with publicity. . . . The courts must take such steps by rule and regulation that will protect their processes from prejudicial outside interferences. Neither prosecutors, counsel for defense, the accused, witnesses, court staff nor enforcement officers coming under the jurisdiction of the court should be permitted to frustrate its function. Collaboration between counsel and the press as to information affecting the fairness of a criminal trial is not only subject to regulation, but is highly censurable and worthy of disciplinary measures." Sheppard v. Maxwell, 384 U.S. 333, 362-63, 16 L.Ed.2d 600, 620, 86 S.Ct. 1507, 1522 (1966).

without trial, make or participate in making an extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication and that relates to:

(1) The character, reputation, or prior criminal record (including arrests, indictments, or other charges of crime) of the accused.

(2) The possibility of a plea of guilty to the offense charged or to a lesser offense.

(3) The existence or contents of any confession, admission, or statement given by the accused or his refusal or failure to make a statement.

(4) The performance or results of any examinations or tests or the refusal or failure of the accused to submit to examinations or tests.

(5) The identity, testimony, or credibility of a prospective witness.

(6) Any opinion as to the guilt or innocence of the accused, the evidence, or the merits of the case.

(C) DR 7-107(B) does not preclude a lawyer during such period from announcing:

(1) The name, age, residence, occupation, and family status of the accused.

(2) If the accused has not been apprehended, any information necessary to aid in his apprehension or to warn the public of any dangers he may present.

(3) A request for assistance in obtaining evidence.

(4) The identity of the victim of the crime.

(5) The fact, time, and place of arrest, resistance, pursuit, and use of weapons.

(6) The identity of investigating and arresting officers or agencies and the length of the investigation.

(7) At the time of seizure, a description of the physical evidence seized, other than a confession, admission, or statement.

(8) The nature, substance, or text of the charge.

(9) Quotations from or references to public records of the court in the case.

(10) The scheduling or result of any step in the judicial proceedings.

(11) That the accused denies the charges made against him.

(D) During the selection of a jury or the trial of a criminal matter, a lawyer or law firm associated with the prosecution or defense of a criminal matter shall not make or participate in making an extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication and that relates to the trial, parties, or issues in the trial or other matters that are reasonably likely to interfere with a fair trial, except that he may quote from or refer without comment to public records of the court in the case.

(E) After the completion of a trial or disposition without trial of a criminal matter and prior to the imposition of sentence, a lawyer or law firm associated with the prosecution or defense shall not make or participate in making an extrajudicial statement that a reasonable person would expect to be disseminated by public communication and that is reasonably likely to affect the imposition of sentence.

(F) The foregoing provisions of DR 7-107 also apply to professional disciplinary proceedings and juvenile disciplinary proceedings when pertinent and consistent with other law applicable to such proceedings.

(G) A lawyer or law firm associated with a civil action shall not during its investigation or litigation make or participate in making an extrajudicial statement, other than a quotation from or reference to public records, that a reasonable person would expect to be disseminated by means of public communication and that relates to:

(1) Evidence regarding the occurrence or transaction involved.

(2) The character, credibility, or criminal record of a party, witness, or prospective witness.

(3) The performance or results of any examinations or tests or the refusal or failure of a party to submit to such.

(4) His opinion as to the merits of the claims or defenses of a party, except as required by law or administrative rule.

(5) Any other matter reasonably likely to interfere with a fair trial of the action.

(H) During the pendency of an administrative proceeding, a lawyer or law firm associated therewith shall not make or participate in making a statement, other than a quotation from or reference to public records, that a reasonable person would expect to be disseminated by means of public communication if it is made outside the official course of the proceeding and relates to:

(1) Evidence regarding the occurrence or transaction involved.

(2) The character, credibility, or criminal record of a party, witness, or prospective witness.

(3) Physical evidence or the performance or results of any examinations or tests or the refusal or failure of a party to submit to such.

(4) His opinion as to the merits of the claims, defenses, or positions of an interested person.

(5) Any other matter reasonably likely to interfere with a fair hearing.

(I) The foregoing provisions of DR 7-107 do not preclude a lawyer from replying to charges of misconduct publicly made against him or from participating in the proceedings of legislative, administrative, or other investigative bodies,

(J) A lawyer shall exercise reasonable care to prevent his employees and associates from making an extrajudicial statement that he would be prohibited from making under DR 7-107.

DR 7-108 Communication with or Investigation of Jurors.

(A) Before the trial of a case a lawyer connected therewith shall not communicate with or cause another to communicate with anyone he knows to be a member of the venire from which the jury will be selected for the trial of the case.

(B) During the trial of a case:

(1) A lawyer connected therewith shall not communicate with or cause another to communicate with any member of the jury.86

(2) A lawyer who is not connected therewith shall not communicate with or cause another to communicate with a juror concerning the case.

(C) DR 7-108(A) and (B) do not prohibit a lawyer from communicating with veniremen or jurors in the course of official proceedings.

(D) After discharge of the jury from further consideration of a case with which the lawyer was connected, the lawyer shall not ask questions of or make comments to a member of that jury that are calculated merely to harass or embarrass the juror or to influence his actions in future jury service.87

(E) A lawyer shall not conduct or cause, by financial support or otherwise, another to conduct a vexatious or harassing investigation of either a venireman or a juror.

(F) All restrictions imposed by DR 7-108 upon a lawyer also apply to communications with or investigations of members of a family of a venireman or a juror.

(G) A lawyer shall reveal promptly to the court improper conduct by a venireman or a juror, or by another toward a venireman or a juror or a member of his family, of which the lawyer has knowledge.

DR 7-109 Contact with Witnesses.

(A) A lawyer shall not suppress any evidence that he or his client has a legal obligation to reveal or produce.88

(B) A lawyer shall not advise or cause a person to secrete himself or to leave the jurisdiction of a tribunal for the purpose of making him unavailable as a witness therein.89

(C) A lawyer shall not pay, offer to pay, or acquiesce in the payment of compensation to a witness contingent upon the content of his testimony or the outcome of the case.[90] But a lawyer may advance, guarantee, or acquiesce in the payment of:

(1) Expenses reasonably incurred by a witness in attending or testifying.

(2) Reasonable compensation to a witness for his loss of time in attending or testifying.

(3) A reasonable fee for the professional services of an expert witness.

DR 7-110 Contact with Officials.91

(A) A lawyer shall not give or lend any thing of value to a judge, official, or employee of a tribunal.

(B) In an adversary proceeding, a lawyer shall not communicate, or cause another to communicate, as to the merits of the cause with a judge or an official before whom the proceeding is pending, except:

(1) In the course of official proceedings in the cause.

(2) In writing if he promptly delvers a copy of the writing to opposing counsel or to the adverse party if he is not represented by a lawyer.

(3) Orally upon adequate notice to opposing counsel or to the adverse party if he is not represented by a lawyer.

(4) As otherwise authorized by law.92

86. *See* ABA Canon 23.

87 "Mt would be unethical for a lawyer to harass, entice, induce or exert influence on a juror to obtain his or testimony." *ABA Opinion* 319 (1968).

88 *See* ABA Canon 5.

89 *Cf.* ABA Canon 5.

*"Rule 15. . . .* A member of the State Bar shall not advise a person, whose testimony could establish or tend to establish a material fact, to avoid service of process, or secrete himself, or otherwise to make his testimony unavailable." Cal.Business and Professions Code § 6076 (West 1962).

9° *See* In re O'Keefe, 49 Mont. 369, 142 P. 638 (1914).

91 *Cf.* ABA Canon 3.

92 *"Rule 16. . . .* A member of the State Bar shall not, in the absence of opposing counsel, communicate with or argue to a judge or judicial officer except in open court upon the merits of a contested matter pending before such judge or judicial officer ; nor shall he, without furnishing opposing counsel with a copy thereof, address a written communication to a judge or judicial officer concerning the merits of a contested matter pending before such judge or judicial officer. This rule shall not apply to ex parte matters." Cal.Business and Professions Code § 6076 (West 1962).

## CANON 8

### A Lawyer Should Assist in Improving the Legal System

### ETHICAL CONSIDERATIONS

EC 8-1 Changes in human affairs and imperfections in human institutions make necessary constant efforts to maintain and improve our legal system.[1] This system should function in a manner that commands public respect and fosters the use of legal remedies to achieve redress of grievances. By reason of education and experience, lawyers are especially qualified to recognize deficiencies in the legal system and to initiate corrective measures therein. Thus they should participate in proposing and supporting legislation and programs to improve the system,[2] without regard to the general interests or desires of clients or former clients.[3]

EC 8-2 Rules of law are deficient if they are not just, understandable, and responsive to the needs of society. If a lawyer believes that the existence or absence of a rule of law, substantive or procedural, causes or contributes to an unjust result, he should endeavor by lawful means to obtain appropriate changes in the law. He should encourage the simplification of laws and the repeal or amendment of laws that are outmoded.[4] Likewise, legal procedures should be improved whenever experience indicates a change is needed.

EC 8-3 The fair administration of justice requires the availability of competent lawyers. Members of the public should be educated to recognize the existence of legal problems and the *resultant* need for legal *services,* and should be provided methods for intelligent selection of counsel. Those persons unable to pay for legal services should be provided needed services. Clients and lawyers should not be penalized by undue geographical restraints upon representation in legal matters, and the bar should address itself to improvements in licensing, reciprocity, and admission procedures consistent with the needs of modern commerce.

EC 8-4 Whenever a lawyer seeks legislative or administrative changes, he should identify the capacity in which he appears, whether on behalf of himself, a client, or the public.[5] A lawyer may advocate such changes on behalf of a client even though he does not agree with them. But when a lawyer purports to act on behalf of the public, he should espouse only those changes which he conscientiously believes to be in the public interest.

EC 8-5 Fraudulent, deceptive, or otherwise illegal conduct by a participant in a proceeding before a tribunal or legislative body is inconsistent with fair administration of justice, and it should never be participated in or condoned by lawyers. Unless constrained by his obligation to preserve the confidences and secrets of his client, a lawyer should reveal to appropriate authorities any knowledge he may have of such improper conduct.

EC 8-6 Judges and administrative officials having adjudicatory powers ought to be persons of integrity, competence, and suitable temperament. Generally, lawyers are qualified, by personal observation or investigation, to evaluate the qualifications of persons seeking or being considered for such public offices, and for this reason they have a special responsibility to aid in the selection of only those who are qualified.[6] It is the duty of

[1] . [Another] task of the great lawyer is to do his part individually and as a member of the organized bar to improve his profession, the courts, and the law. As President Theodore Roosevelt aptly put it, 'Every man owes some of his time to the upbuilding of the profession to which he belongs.' Indeed, this obligation is one of the great things which distinguishes a profession from a business. The soundness and the necessity of President Roosevelt's admonition insofar as it relates to the legal profession cannot be doubted. The advances in natural science and technology are so startling and the velocity of change in business and in social life is so great that the law along with the other social sciences, and even human life itself, is in grave danger of being extinguished by new gods of its own invention if it does not awake from its lethargy. Vanderbilt, *The Five Functions of the Lawyer: Service to Clients and the Public,* 40 A.B.A.J. 31, 31-32 (1954).

[2] *See* ABA Canon 29; *Cf.* Cheatham, *The Lawyer's Role and Surroundings,* 25 Rocky Mt.L.Rev. 405, 406-07 (1953).

"The lawyer tempted by repose should recall the heavy costs paid by his profession when needed legal reform has to be accomplished through the initiative of public-spirited laymen. Where change must be thrust from without upon an unwilling Bar, the public's least flattering picture of the lawyer seems confirmed. The lawyer concerned for the standing of his profession will, therefore, interest himself actively in the improvement of the law. In doing so he will not only help to maintain confidence in the Bar, but will have the satisfaction of meeting a responsibility inhering in the nature of his calling." *Professional Responsibility: Report of the Joint Conference,* 44 A.B.A.J. 1159, 1217 (1958).

[3] *See* Stayton, Cum *Honore Off icium,* 19 Tex.B.J. 765, 766 (1956) ; *Professional Responsibility: Report of the Joint Conference,* 44 A.B.A.J. 1159, 1162 (1958) ; and Paul, *The Lawyer as a Tax Adviser,* 25 Rocky Mt.L.Rev. 412, 433-34 (1953).

[4] "There are few great figures in the history of the Bar who have not concerned themselves with the reform and improvement of the law. The special obligation of the profession with respect to legal reform rests on considerations too obvious to require enumeration. Certainly it is the lawyer who has both the best chance to know when the law is working badly and the special competence to put it in order." *Professional Responsibility: Report of the Joint Conference,* 44 A.B.A.J. 1159, 1217 (1958).

[5] *"Rule 14. . . .* A member of the State Bar shall not communicate with, or appear before, a public officer, board, committee or body, in his professional capacity, without first disclosing that he is an attorney representing interests that may be affected by action of such officer, board, committee or body." Cal.Business and Professions Code § 6076 (West 1962).

[6] *See* ABA Canon 2.

"Lawyers are better able than laymen to appraise accurately the qualifications of candidates for judicial office. It is proper that they should make that appraisal known to the voters in a proper and dignified manner. A lawyer may with propriety endorse a candidate for judicial office and seek like endorsement from other lawyers. But

lawyers to endeavor to prevent political considerations from outweighing judicial fitness in the selection of judges. Lawyers should protest earnestly against the appointment or election of those who are unsuited for the bench and should strive to have elected [7] or appointed thereto only those who are willing to forego pursuits, whether of a business, political, or other nature, that may interfere with the free and fair consideration of questions presented for adjudication. Adjudicatory officials, not being wholly free to defend themselves, are entitled to receive the support of the bar against unjust criticism.[8] While a lawyer as a citizen has a right to criticize such officials publicly,[9] he should be certain of the merit of his complaint, use appropriate language, and avoid petty criticisms, for unrestrained and intemperate statements tend to lessen public confidence in our legal system.[10] Criticisms motivated by reasons other than a desire to improve the legal system are not justified.

EC 8-7 Since lawyers are a vital part of the legal system, they should be persons of integrity, of professional skill, and of dedication to the improvement of the system. Thus a lawyer should aid in establishing, as well as enforcing, standards of conduct adequate to protect the public by insuring that those who practice law are qualified to do so.

EC 8-8 Lawyers often serve as legislators or as holders of other public offices. This is highly desirable, as lawyers are uniquely qualified to make significant contributions to the improvement of the legal system. A lawyer who is a public officer, whether full or part-time, should not engage in activities in which his personal or professional interests are or foreseeably may be in conflict with his official duties.[11]

EC 8-9 The advancement of our legal system is of vital importance in maintaining the rule of law and in facilitating orderly changes; therefore, lawyers should encourage, and should aid in making, needed changes and improvements.

## DISCIPLINARY RULES

DR 8-101 Action as a Public Official.

(A) A lawyer who holds public office shall not:

(1) Use his public position to obtain, or attempt to obtain, a special advantage in legislative matters for himself or for a client under circumstances where he knows or it is obvious that such action is not in the public interest.

(2) Use his public position to influence, or attempt to influence, a tribunal to act in favor of himself or of a client.

the lawyer who endorses a judicial candidate or seeks that endorsement from other lawyers should be actuated by a sincere belief in the superior qualifications of the candidate for judicial service and not by personal or selfish motives; and a lawyer should not use or attempt to use the power or prestige of the judicial office to secure such endorsement. On the other hand, the lawyer whose endorsement is sought, if he believes the candidate lacks the essential qualifications for the office or believes the opposing candidate is better qualified, should have the courage and moral stamina to refuse the request for endorsement." *ABA Opinion* 189 (1938).

[7] "[W]e are of the opinion that, whenever a candidate for judicial office merits the endorsement and support of lawyers, the lawyers may make financial contributions toward the campaign if its cost, when reasonably conducted, exceeds that which the candidate would be expected to bear personally." *ABA Opinion* 226 (1941).

[8] *See* ABA Canon 1.

[9] "Citizens have a right under our constitutional system to criticize governmental officials and agencies. Courts are not, and should not be, immune to such criticism." Konigsberg *v.* State 'Bar of California, 353 U.S. 252, 269 (1957).

[10] "[E]very lawyer, worthy of respect, realizes that public confidence in our courts is the cornerstone of our governmental structure, and will refrain from unjustified attack on the character of the judges, while recognizing the duty to denounce and expose a corrupt or dishonest judge." Kentucky State Bar Ass'n v. Lewis, 282 S.W.2d 321, 326 (Ky. 1955).

"We should be the last to deny that Mr. Meeker has the right to uphold the honor of the profession and to expose without *fear or favor* corrupt or dishonest conduct in the profession, whether the conduct be that of a judge or not. . . . However, this Canon [29] does not permit one to make charges which are false and untrue and unfounded in fact. When one's fancy leads him to make false charges, attacking the character and integrity of others, he does so at his peril. He should not do so without adequate proof of his charges and he is certainly not authorized to make careless, untruthful and vile charges against his professional brethren." In re Meeker, 76 N.M. 354, 364-65, 414 P.2d 862, 869 (1966), *appeal dismissed,* 385 U.S. 449, 17 L.Ed.2d 510, 87 S.Ct. 613 (1967).

[11] *"Opinions 16, 30,* 34, *77, 118* and 134 relate to Canon *6,* and pass on questions concerning the propriety of the conduct of an attorney who is a public officer, in representing private interests adverse to those of the public body which he represents. The principle applied in those opinions is that an attorney holding public office should avoid all conduct which might lead the layman to conclude that the attorney is utilizing his public position to further his professional success or personal interests." *ABA Opinion* 192 (1939).

"The next question is whether a lawyer-member of a legislative body may appear as counsel or co-counsel at hearings before a zoning board of appeals, or similar tribunal, created by the legislative group of which he is a member. We are of the opinion that he may practice before fact-finding officers, hearing bodies and commissioners, since under our views he may appear as counsel in the courts where his municipality is a party. Decisions made at such hearings are usually subject to administrative review by the courts upon the record there made. It would be inconsistent to say that a lawyer-member of a legislative body could not participate in a hearing at which the record is made, but could appear thereafter when the cause is heard by the courts on administrative review. This is subject to an important exception. He should not appear as counsel where the matter is subject to review by the legislative body of which he is a member. . . . We are of the opinion that where a lawyer does so appear there would be conflict of interests between his duty as an advocate for his client on the one hand and the obligation to his governmental unit on the other." In re Becker, 16 Il1.2d 488, 494-95, 158 N.E.2d 753, 756-57 (1959).

*Cf. ABA Opinions* 186 (1938), 136 (1935), 118 (1934), and 77 (1932).

(3) Accept any thing of value from any person when the lawyer knows or it is obvious that the offer is for the purpose of influencing his action as a public official.

DR 8-102 Statements Concerning Judges and Other Adjudicatory Officers.12

(A) A lawyer shall not knowingly make false statements of fact concerning the qualifications of a candidate for election or appointment to a judicial office.

(B) A lawyer shall not knowingly make false accusations against a judge or other adjudicatory officer.

## CANON 9

### A Lawyer Should Avoid Even the Appearance of Professional Impropriety

#### ETHICAL CONSIDERATIONS

EC 9-1 Continuation of the American concept that we are to be governed by rules of law requires that the people have faith that justice can be obtained through our legal system.' A lawyer should promote public confidence in our system and in the legal profession.2

EC 9-2 Public confidence in law and lawyers may be eroded by irresponsible or improper conduct of a lawyer. On occasion, ethical conduct of a lawyer may appear to laymen to be unethical. In order to avoid misunderstandings and hence to maintain confidence, a lawyer should fully and promptly inform his client of material developments in the matters being handled for the client. While a lawyer should guard against otherwise proper conduct that has a tendency to diminish public confidence in the legal system or in the legal profession, his duty to clients or to the public should never be subordinate merely because the full discharge of his obligation may be misunderstood or may tend to subject him or the legal profession to criticism. When explicit ethical guidance does not exist, a lawyer should determine his conduct by acting in a manner that promotes public confidence in the integrity and efficiency of the legal system and the legal profession.3

EC 9-3 After a lawyer leaves judicial office or other public employment, he should not accept employment in connection with any matter in which he had substantial responsibility prior to his leaving, since to accept employment would give the appearance of impropriety even if none exists.'

EC 9-4 Because the very essence of the legal system is to provide procedures by which matters can be presented in an impartial manner so that they may be decided solely upon the merits, any statement or suggestion by a lawyer that he can or would attempt to circumvent those procedures is detrimental to the legal system and tends to undermine public confidence in it.

EC 9-5 Separation of the funds of a client from those of his lawyer not only serves to protect the client but also avoids even the appearance of impropriety, and therefore commingling of such funds should be avoided.

EC 9-6 Every lawyer owes a solemn duty to uphold the integrity and honor of his profession; to encourage respect of the law and for the courts and the judges thereof; to observe the Code of Professional Responsibility; to act as a member of a learned profession, one dedicated to public service; to cooperate with his brother lawyers in supporting the organized bar through the devoting of his time, efforts, and financial support as his professional standing and ability reasonably permit; to conduct himself so as to reflect credit on the legal profession and to inspire the confidence, respect, and trust of his clients and of the public; and to strive to avoid not only professional impropriety but also the appearance of impropriety.5

12 cf. ABA Canons 1 and 2.

1 "Integrity is the very breath of justice. Confidence in our law, our courts, and in the administration of justice is our supreme interest. No practice must be permitted to prevail which invites towards the administration of justice a doubt or distrust of its integrity." Erwin M. Jennings Co. *v.* DiGenova, 107 Conn. 491, 499, 141 A. 866, 868 (1928).

2 "A lawyer should never be reluctant or too proud to answer unjustified criticism of his profession, of himself, or of his brother lawyer. He should guard the reputation of his profession and of his brothers as zealously as he guards his own." Rochelle and Payne, *The Struggle for Public Understanding,* 25 Texas B.J. 109, 162 (1962).

3 *See* ABA Canon 29.

4 *See* ABA Canon 36.

5 "As said in Opinion 49 of the Committee on Professional Ethics and Grievances of the American Bar Association, page 134: 'An attorney should not only avoid impropriety but should avoid the appearance of impropriety.' " State ex rel, Nebraska State Bar Ass'n v. Richards, 165 Neb. 80. 93, 84 N.W.2d 136, 145 (1957).

"It would also be preferable that such contribution [to the campaign of a candidate for judicial office] be made to a campaign committee rather than to the candidate personally. In so doing, possible appearances of impropriety would be reduced to a minimum." *ABA* Opinion 226 (1941).

"The lawyer assumes high duties, and has imposed upon him grave responsibilities. He may be the means of much good or much mischief. Interests of vast magnitude are entrusted to him; confidence is reposed in him ; life, liberty, character and property should be protected by him. He should guard, with jealous watchfulness, his own reputation, as well as that of his profession." People ex rel. Cutler v. Ford, 54 Ill. 520, 522 (1870), and also quoted in State Board of Law Examiners v. Sheldon, 43 Wyo. 522, 526, 7 P.2d 226, 227 (1932).

*See ABA Opinion* 150 (1936).

## DISCIPLINARY RULES

### DR 9-101 Avoiding Even the Appearance of Impropriety.6

(A) A lawyer shall not accept private employment in a matter upon the merits of which he has acted in a judicial capacity.7

(B) A lawyer shall not accept private employment in a matter in which he had substantial responsibility while he was a public employee.8

(C) A lawyer shall not state or imply that he is able to influence improperly or upon irrelevant grounds any tribunal, legislative body,9 or public official.

[6] *Cf.* Code of Professional Responsibility, EC 5-6.

[7] *See ABA* Canon 36.

"It is the duty of the judge to rule on questions of law and evidence in misdemeanor cases and examinations in felony cases. That duty calls for impartial and uninfluenced judgment, regardless of the effect on those immediately involved or others who may, directly or indirectly, be affected. Discharge of that duty might be greatly interfered with if the judge, in another capacity, were permitted to hold himself out to employment by those who are to be, or who may be, brought to trial in felony cases, even though he did not conduct the examination. His private interests as a lawyer in building up his clientele, his duty as such zealously to espouse the cause of his private clients and to defend against charges of crime brought by law-enforcement agencies of which he is a part, might prevent, or even destroy, that unbiased judicial judgment which is so essential in the administration of justice.

"In our opinion, acceptance of a judgeship with the duties of conducting misdemeanor trials, and examinations in felony cases to determine whether those accused should be bound over for trial in a higher court, ethically bars the judge from acting as attorney for the defendants upon such trial, whether they were examined by him or by some other judge. Such a practice would not only diminish public confidence in the administration of justice in both courts, but would produce serious conflict between the private interests of the judge as a lawyer, and of his clients, and his duties as a judge in adjudicating important phases of criminal processes in other cases. The public and private duties would be incompatible. The prestige of the judicial office would be diverted to private benefit, and the judicial office would be demeaned thereby." *ABA Opinion* 242 (1942).

"A lawyer, who has previously occupied a judicial position or acted in a judicial capacity, should refrain from accepting employment in any matter involving the same facts as were involved in any specific question which he acted upon in a judicial capacity and, for the same reasons, should also refrain from accepting any employment which might reasonably appear to involve the same facts." *ABA Opinion* 49 (1931).

*See ABA Opinion* 110 (1934).

[8] *See ABA Opinions* 135 (1935) and 134 (1935) ; *cf.* ABA Canon 36 and *ABA Opinions* 39 (1931) and 26 (1930). *But see ABA Opinion* 37 (1931).

[9] "[A statement by a governmental department or agency with regard to a lawyer resigning from its staff that includes a laudation of his legal ability] carries implications, probably not founded in fact, that the lawyer's acquaintance and previous relations with the personnel of the administrative agencies of the government place him in an advantageous position in practicing before such agencies. So to imply would not only represent what probably is untrue, but would be highly reprehensible." *ABA Opinion* 184 (1938).

### DR 9-102 Preserving Identity of Funds and Property of a Client.10

(A) All funds of clients paid to a lawyer or law firm, other than advances for costs and expenses, shall be deposited in one or more identifiable bank accounts maintained in the state in which the law office is situated and no funds belonging to the lawyer or law firm shall be deposited therein except as follows:

(1) Funds reasonably sufficient to pay bank charges may be deposited therein.

(2) Funds belonging in part to a client and in part presently or potentially to the lawyer or law firm must be deposited therein, but the portion belonging to the lawyer or law firm may be withdrawn when due unless the right of the lawyer or law firm to receive it is disputed by the client, in which event the disputed portion shall not be withdrawn until the dispute is finally resolved.

(B) A lawyer shall:

(1) Promptly notify a client of the receipt of his funds, securities, or other properties.

(2) Identify and label securities and properties of a client promptly upon receipt and place them in a safe deposit box or other place of safekeeping as soon as practicable.

(3) Maintain complete records of all funds, securities, and other properties of a client coming into the possession of the

[10] *See* ABA Canon 11.

*"Rule 9. . . .* A member of the State Bar shall not commingle the money or other property of a client with his own ; and he shall promptly report to the client the receipt by him of all money and other property belonging to such client. Unless the client otherwise directs in writing, he shall promptly deposit his client's funds in a bank or trust company . . . in a bank account separate from his own account and clearly designated as 'Clients' Funds Account' or 'Trust Funds Account' or words of similar import. Unless the client otherwise directs in writing, securities of a client in bearer form shall be kept by the attorney in a safe deposit box at a bank or trust company, . . . which safe deposit box shall be clearly designated as 'Clients' Account' or 'Trust Account' or words of similar import, and be separate from the attorney's own safe deposit box." Cal.Business and Professions Code § 6076 (West 1962).

"[C]ommingling is committed when a client's money is intermingled with that of his attorney and its separate identity lost so that it may be used for the attorney's personal expenses or subjected to claims of his creditors. . . . The rule against commingling was adopted to provide against the probability in some cases, the possibility in many cases, and the danger in all cases that such commingling will result in the loss of clients' money." Black v. State Bar, 57 Ca1.2d 219, 225-26, 368 P.2d 118, 122, 18 Cal.Rptr. 518, 522 (1962).

sistance to his client,[34] except that a lawyer may advance or guarantee the expenses of litigation, including court costs, expenses of investigation, expenses of medical examination, and costs of obtaining and presenting evidence, provided the client remains ultimately liable for such expenses.

DR 5-104 Limiting Business Relations with a Client.

(A) A lawyer shall not enter into a business transaction with a client if they have differing interests therein and if the client expects the lawyer to exercise his professional judgment therein for the protection of the client, unless the client has consented after full disclosure.

(B) Prior to conclusion of all aspects of the matter *giving* rise to his employment, a lawyer shall not enter into any arrangement or understanding with a client or a prospective client by which he acquires an interest hi publication rights with respect to the subject matter of his employment or proposed employment.

DR 5-105 Refusing to Accept or Continue Employment if the Interests of Another Client May Impair the Independent Professional Judgment of the Lawyer.

(A) A lawyer shall decline proffered employment if the exercise of his independent professional judgment in behalf of a client will be or is likely to be adversely affected by the acceptance of the proffered employment,[35] except to the extent permitted under DR 5-105(C).36

(B) A lawyer shall not continue multiple employment if the exercise of his independent professional judgment in behalf of a client will be or is likely to be adversely affected by his representation of another client, except to the extent permitted under DR 5-105(C).37

(C) In the situations covered by DR 5-105(A) and (B), a lawyer may represent multiple clients if it is obvious that he can adequately represent the interest of each and if each consents to the representation after full disclosure of the possible effect of such representation on the exercise of his independent professional judgment on behalf of each.

(D) If a lawyer is required to decline employment or to withdraw from employment under DR 5-105, no partner or associate of his or his firm may accept or continue such employment.

DR 5-106 Settling Similar Claims of Clients.38

(A) A lawyer who represents two or more clients shall not make or participate in the making of an aggregate settlement of the claims of or against his clients, unless each client has consented to the settlement after being advised of the existence and nature of all the claims involved in the proposed settlement, of the total amount of the settlement, and of the participation of each person in the settlement.

DR 5-107 Avoiding Influence by Others Than the Client.

(A) Except with the consent of his client after full disclosure, a lawyer shall not:

(1) Accept compensation for his legal services from one other than his client.

(2) Accept from one other than his client any thing of value related to his representation of or his employment by his client.39

(B) A lawyer shall not permit a person who recommends, employs, or pays him to render legal services for another to direct or regulate his professional judgment in rendering such legal services.40

(C) A lawyer shall not practice with or in the form of a professional corporation or association authorized to practice law for a profit, if:

(1) A non-lawyer owns any interest therein,41 except that a fiduciary representative of the estate of a lawyer may hold the stock or interest of the lawyer for a reasonable time during administration;

(2) A non-lawyer is a corporate director or officer thereof; [42] or

[34] *See* ABA Canon 42; *cf. ABA Opinion* 288 (1954).

[35] *See* ABA Canon 6; *cf. ABA Opinions* 167 (1937), 60 (1931), and 40 (1931).

[36] *ABA Opinion* 247 (1942) held that an attorney could not investigate a night club shooting on behalf of one of the owner's liability insurers, obtaining the cooperation of the owner, and later represent the injured patron in an action against the owner and a different insurance company unless the attorney obtain the "express consent of all concerned given after a full disclosure of the facts," since to do so would be to represent conflicting interests.

*See ABA Opinions* 247 (1942), 224 (1941), 222 (1941), 218 (1941), 112 (1934), 83 (1932), and 86 (1932).

[37] *Cf. ABA Opinions* 231 (1941) and 160 (1936).

[38] *Cf. ABA Opinions* 243 (1942) and 235 (1941).

[39] *See* ABA Canon 38.

"A lawyer who receives a commission (whether delayed or not) from a title insurance company or guaranty fund for recommending or selling the insurance to his client, or for work done for the client or the company, without either fully disclosing to the client his financial interest in the transaction, or crediting the client's bill with the amount thus received, is guilty of unethical conduct." *ABA Opinion* 304 (1962).

[40] *See* ABA Canon 35; *cf. ABA Opinion* 237 (1941).

"When the lay forwarder, as agent for the creditor, forwards a claim to an attorney, the direct relationship of attorney and client shall then exist between the attorney and the creditor, and the forwarder shall not interpose itself as an intermediary to control the activities of the attorney." *ABA Opinion* 294 (1958).

[41] "Permanent beneficial and voting rights in the organization set up to practice law, whatever its form, must be restricted to lawyers while the organization is engaged in the practice of law." *ABA Opinion* 303 (1961).

[42] *"Canon 33 . . .* promulgates underlying principles that must be observed no matter in what form of organiza-

(3) A non-lawyer has the right to direct or control the professional judgment of a lawyer.43

## CANON 6

## A Lawyer Should Represent a Client Competently

### ETHICAL CONSIDERATIONS

EC 6-1 Because of his vital role in the legal process, a lawyer should act with competence and proper care in representing clients. He should strive to become and remain proficient in his practice [1] and should accept employment only in matters which he is or intends to become competent to handle.

EC 6-2 A lawyer is aided in attaining and maintaining his competence by keeping abreast of current legal literature and developments, participating in continuing legal education programs, [2] concentrating in particular areas of the law, and by utilizing other available means. He has the additional ethical obligation to assist in improving the legal profession, and he may do so by participating in bar activities intended to advance the quality and standards of members of the profession. Of particular importance is the careful training of his younger associates and the giving of sound guidance to all lawyers who consult him. In short, a lawyer should strive at all levels to aid the legal profession in advancing the highest possible standards of integrity and competence and to meet those standards himself.

EC 6-3 While the licensing of a lawyer is evidence that he has met the standards then prevailing for admission to the bar, a lawyer generally should not accept employment in any area of the law in which he is not qualified. [3] However, he may accept such employment if in good faith he expects to become qualified through study and investigation, as long as such preparation would not result in unreasonable delay or expense to his client. Proper preparation and representation may require the association by the lawyer of professionals in other disciplines. A lawyer offered employment in a matter in which he is not and does not expect to become so qualified should either decline the employment or, with the consent of his client, accept the employment and associate a lawyer who is competent in the matter.4

EC 6-4 Having undertaken representation, a lawyer should use proper care to safeguard the interests of his client. If a lawyer has accepted employment in a matter beyond his competence but in which he expected to become competent, he should diligently undertake the work and study necessary to qualify himself. In addition to being qualified to handle a particular matter, his obligation to his client requires him to prepare adequately for and give appropriate attention to his legal work.

EC 6-5 A lawyer should have pride in his professional endeavors. His obligation to act competently calls for higher motivation than that arising from fear of civil liability or disciplinary penalty.

tion lawyers practice law. Its requirement that no person shall be admitted or held out as a practitioner or member who is not a member of the legal profession duly authorized to practice, and amenable to professional discipline, makes it clear that any centralized management must be in lawyers to avoid a violation of this Canon." *ABA Opinion* 303 (1961).

43 "There is no intervention of any lay agency between lawyer and client when centralized management provided only by lawyers may give guidance or direction to the services being rendered by a lawyer-member of the organization to a client. The language in *Canon 35* that a lawyer should avoid all relations which direct the performance of his duties by or in the interest of an intermediary refers to lay intermediaries and not lawyer intermediaries with whom he is associated in the practice of law." *ABA Opinion* 303 (1961).

1 "[W]hen a citizen is faced with the need for a lawyer, he wants, and is entitled to, the best informed counsel he can obtain. Changing times produce changes in our laws and legal procedures. The natural complexities of law require continuing intensive study by a lawyer if he is to render his clients a maximum of efficient service. And, in so doing, he maintains the high standards of the legal profession; and he also increases respect and confidence by the general public." Rochelle & Payne, *The Struggle for Public Understanding,* 25 Texas B.J. 109, 160 (1962).

"We have undergone enormous changes in the last fifty years within the lives of most of the adults living today who may be seeking advice. Most of these changes have been accompanied by changes and developments in the law. . . . Every practicing lawyer encounters these problems and is often perplexed with his own inability to keep up, not only with changes in the law, but also with changes in the lives of his clients and their legal problems.

"To be sure, no client has a right to expect that his lawyer will have all of the answers at the end of his tongue or even in the back of his head at all times, But the client does have the right to expect that the lawyer will have devoted his time and energies to maintaining and improving his competence to know where to look for the answers, to know how to deal with the problems, and to know how to advise to the best of his legal talents and abilities." Levy & Sprague, *Accounting and* Law: *Is Dual Practice in the Public Interest?,* 52 A.B.A.J. 1110, 1112 (1966).

2 "The whole purpose of continuing legal education, so enthusiastically supported by the ABA, is to make it possible for lawyers to make themselves better lawyers. But there are no nostrums for proficiency in the law; it must come through the hard work of the lawyer himself. To the extent that that work, whether it be in attending institutes or lecture courses, in studying after hours or in the actual day in and day out practice of his profession, can be concentrated within a limited field, the greater the proficiency and expertness that can be developed." *Report of the Special Committee on Specialization and Specialized Legal Education,* 79 A.B.A.Rep. 582, 588 (1954).

3 "If the attorney is not competent to skillfully and properly perform the work, he should not undertake the service." Degen v. Steinbrink, 202 App.Div. 477, 481, 195 N.Y.S. 810, 814 (1922), *aff'd mem.,* 236 N.Y. 669, 142 N.E. 328 (1923).

4 *Cf. ABA Opinion* 232 (1941).

EC 6-6 A lawyer should not seek, by contract or other means, to limit his individual liability to his client for his malpractice. A lawyer who handles the affairs of his client properly has no need to attempt to limit his liability for his professional activities and one who does not handle the affairs of his client properly should not be permitted to do so. A lawyer who is a stockholder in or is associated with a professional legal corporation may, however, limit his liability for malpractice of his associates in the corporation, but only to the extent permitted by law.5

## DISCIPLINARY RULES

DR 6-101 Failing to Act Competently.

(A) A lawyer shall not:

(1) Handle a legal matter which he knows or should know that he is not competent to handle, without associating with him a lawyer who is competent to handle it.

(2) Handle a legal matter without preparation adequate in the circumstances.

(3) Neglect a legal matter entrusted to him.6

DR 6-102 Limiting Liability to Client.

(A) A lawyer shall not attempt to exonerate himself from or limit his liability to his client for his personal malpractice.

## CANON 7

### A Lawyer Should Represent a Client Zealously Within the Bounds of the Law

ETHICAL CONSIDERATIONS

EC 7-1 The duty of a lawyer, both to his client 1 and to the legal system, is to represent his client zealously [2] within the bounds of the law,[3] which includes Disciplinary Rules and enforceable pro-

*See ABA Opinion* 303 (1961) ; *cf.* Code of Professional Responsibility, EC 2-11.

[6] The annual report for 1967-1968 of the Committee on Grievances of the Association of the Bar of the City of New York showed a receipt of 2,232 complaints ; of the 828 offenses against clients, 76 involved conversion, 49 involved "overreaching," and 452, or more than half of all such offenses, involved neglect. *Annual Report of the Committee on Grievances of the Association of the Bar of the City of New York, N.Y.L.J.,* Sept. 12, 1968, at 4, col. 5.

1 "The right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel. Even the intelligent and educated layman has small and sometimes no skill in the science of law." Powell v. Alabama, 287 U.S. 45, 68-69, 77 L.Ed. 158, 170, 53 S.Ct. 55, 64 (1932).

2 *Cf.* ABA Canon 4.

"At times . . . [the tax lawyer] will be wise to discard some arguments and he should exercise discretion to emphasize the arguments which in his judgment are most likely to be persuasive. But this process involves legal judgment rather than moral attitudes. The tax lawyer should put aside private disagreements with Congressional and Treasury policies. His own notions of policy, and his personal view of what the law should be, are irrelevant. The job entrusted to him by his client is to use all his learning and ability to protect his client's rights, not to help in the process of promoting a better tax system. The tax lawyer need not accept his client's economic and social opinions, but the client is paying for technical attention and undivided concentration upon his affairs. He is equally entitled to performance unfettered by his attorney's economic and social predilections." Paul, *The Lawyer as a Tax Adviser,* 25 Rocky Mt. L. Rev. 412, 418 (1953).

[3] *See* ABA Canons 15 and 32.

ABA Canon 5, although only speaking of one accused of crime, imposes a similar obligation on the lawyer : "[T]he lawyer is bound, by all fair and honorable means, to present every defense that the law of the land permits, to the end that no person may be deprived of life or liberty, but by due process of law."

"Any persuasion or pressure on the advocate which deters him from planning and carrying out the litigation on the basis of 'what, within the framework of the law, is best for my client's interest?' interferes with the obligation to represent the client fully within the law.

"This obligation, in its fullest sense, is the heart of the adversary process. Each attorney, as an advocate, acts for and seeks that which in his judgment is best for his client, within the bounds authoritatively established. The advocate does not *decide* what is just in this case--he would be usurping the function of the judge and jury—he acts for and seeks for his client that which he is entitled to under the law. He can do no less and properly represent the client." Thode, *The Ethical Standard for the Advocate,* 39 Texas L.Rev. 575, 584 (1961).

"The [Texas public opinion] survey indicates that distrust of the lawyer can be traced directly to certain factors. Foremost of these is a basic misunderstanding of the function of the lawyer as an advocate in an adversary system.

"Lawyers are accused of taking advantage of 'loopholes' and 'technicalities' to win. Persons who make this charge are unaware, or do not understand, that the lawyer is hired to win, and if he does not exercise every legitimate effort in his client's behalf, then he is betraying a sacred trust." Rochelle & Payne, *The Struggle for Public Understanding,* 25 Texas B.J. 109, 159 (1962).

"The importance of the attorney's undivided allegiance and faithful service to one accused of crime, irrespective of the attorney's personal opinion as to the guilt of his client, lies in Canon 5 of the American Bar Association Canon of Ethics.

"The difficulty lies, of course, in ascertaining whether the attorney has been guilty of an error of judgment, such as an election with respect to trial tactics, or has otherwise been actuated by his conscience or belief that his client should be convicted in any event. All too frequently courts are called upon to review actions of defense counsel which are, at the most, errors of judgment, not properly reviewable on habeas corpus unless the trial is a farce and a mockery of justice which requires the court to intervene. . . . But when defense counsel, in a truly adverse proceeding, admits that his conscience would not permit him to adopt certain customary trial procedures, this extends beyond the realm of judgment and strongly suggests an invasion of constitutional rights." Johns v. Smyth, 176 F.Supp. 949, 952 (E.D.Va.1959), *modified,* United States ex rel. Wilkins v. Banmiller, 205 F.Supp. 123, 128, n. 5 (E.D.Pa.1962), *aff'd,* 325 F.2d 514 (3d Cir. 1963), *cert. denied,* 379 U.S. 847, 13 L.Ed.2d 51, 85 S.Ct. 87 (1964).

"The adversary system in law administration bears a striking resemblance to the competitive economic system. In each we assume that the individual through partisanship or through self-interest will strive mightily for his side, and that kind of striving we must have. But neither system would be tolerable without restraints and modi-

fessional regulations.[4] The professional responsibility of a lawyer derives from his membership in a profession which has the duty of assisting members of the public to secure and protect available legal rights and benefits. In our government of laws and not of men, each member of our society is entitled to have his conduct judged and regulated in accordance with the law; [5] to seek any lawful objective [6] through legally permissible means; [7] and to present for adjudication any lawful claim, issue, or defense.

EC 7-2 The bounds of the law in a given case are often difficult to ascertain.[8] The language of legislative enactments and judicial opinions may be uncertain as applied to varying factual situations. The limits and specific meaning of apparently relevant law may be made doubtful by changing or developing constitutional interpretations, inadequately expressed statutes or judicial opinions, and changing public and judicial attitudes. Certainty of law ranges from well-settled rules through areas of conflicting authority to areas without precedent.

EC 7-3 Where the bounds of law are uncertain, the action of a lawyer may depend on whether he is serving as advocate or adviser. A lawyer may serve simultaneously as both advocate and adviser, but the two roles are essentially different.[9] In asserting a position on behalf of his client, an advocate for the most part deals with past conduct and must take the facts as he finds them. By contrast, a lawyer serving as adviser primarily assists his client in determining the course of future conduct and relationships. While serving as advocate, a lawyer should resolve in favor of his client doubts as to the bounds of the law.[10] In serving a client as adviser, a lawyer in appropriate

fications, and at times without outright departures from the system itself. Since the legal profession is entrusted with the system of law administration, a part of its task is to develop in its members appropriate restraints without impairing the values of partisan striving. An accompanying task is to aid in the modification of the adversary system or departure from it in areas to which the system is unsuited." Cheatham, *The Lawyer's Role and Surroundings,* 25 Rocky Mt. L.Rev. 405, 410 (1953).

[4] "Rule 4.15 prohibits, in the pursuit of a client's cause, 'any manner of fraud or chicane' ; Rule 4.22 requires 'candor and fairness' in the conduct of the lawyer, and forbids the making of knowing misquotations; Rule 4.47 provides that a lawyer 'should always maintain his integrity,' and generally forbids all misconduct injurious to the interests of the public, the courts, or his clients, and acts contrary to 'justice, honesty, modesty or good morals.' Our Commissioner has accurately paraphrased these rules as follows : 'An attorney does not have the duty to do all and whatever he can that may enable him to win his client's cause or to further his client's interest. His duty and efforts in these respects, although they should be prompted by his "entire devotion" to the interest of his client, must be within and not without the bounds of the law.' " In re Wines, 370 S.W.2d 328, 333 (Mo.1963).
*See* Note, 38 Texas L.Rev. 107, 110 (1959).

[5] "Under our system of government the process of adjudication is surrounded by safeguards evolved from centuries of experience. These safeguards are not designed merely to lend formality and decorum to the trial of causes. They are predicated on the assumption that to secure for any controversy a truly informed and dispassionate decision is a difficult thing, requiring for its achievement a special summoning and organization of human effort and the adoption of measures to exclude the biases and prejudgments that have free play outside the courtroom. All of this goes for naught if the man with an unpopular cause is unable to find a competent lawyer courageous enough to represent him. His chance to have his day in court loses much of its meaning if his case is handicapped from the outset by the very kind of prejudgment our rules of evidence and procedure are intended to prevent." *Professional Responsibility: Report of the Joint Conference,* 44 A.B.A.J. 1159, 1216 (1958).

[6] "[I]t is . . . [the tax lawyer's] positive duty to show the client how to avail himself to the full of what the law permits. He is not the keeper of the Congressional conscience." Paul, *The Lawyer as a Tax Adviser,* 25 Rocky Mt.L.Rev. 412, 418 (1953).

[7] *See* ABA Canons 15 and 30.

"The fact that it desired to evade the law, *as* it is called, is immaterial, because the very meaning of a line in the law is that you intentionally may go as close to it as you can if you do not pass it . . .. It is a matter of proximity and degree as to which minds will differ . . Justice Holmes, in Superior Oil Co. v. Mississippi, 280 U.S. 390, 395-96, 74 L. Ed. 504, 508, 50 S.Ct. 169, 170 (1930).

[9] "Today's lawyers perform two distinct types of functions, and our ethical standards should, but in the main do not, recognize these two functions. Judge Philbrick McCoy recently reported to the American Bar Association the need for a reappraisal of the Canons in light of the new and distinct function of counselor, as distinguished from advocate, which today predominates in the legal profession. . . .

". . . In the first place, any revision of the canons must take into account and speak to this new and now predominant function of the lawyer. . . . It is beyond the scope of this paper to discuss the ethical standards to be applied to the counselor except to state that in my opinion such standards should require a greater recognition and protection for the interest of the public generally than is presently expressed in the canons. Also, the counselor's obligation should extend to requiring him to inform and to impress upon the client a just solution of the problem, considering all interests involved." Thode, *The Ethical Standard for the Advocate,* 39 Texas L.Rev. 575, 578-79 (1961).

"The man who has been called into court to answer for his own actions is entitled to fair hearing. Partisan advocacy plays its essential part in such a hearing, and the lawyer pleading his client's case may properly present it in the most favorable light. A similar resolution of doubts in one direction becomes inappropriate when the lawyer acts as counselor. The reasons that justify and even require partisan advocacy in the trial of a cause do not grant any license to the lawyer to participate as legal advisor in a line of conduct that is immoral, unfair, or of doubtful legality. In saving himself from this unworthy involvement, the lawyer cannot be guided solely by an unreflective inner sense of good faith; he must be at pains to preserve a sufficient detachment from his client's interests so that he remains capable of a sound and objective appraisal of the propriety of what his client proposes to do." *Professional Responsibility: Report of the Joint Conference,* 44 A.B.A.J, 1159, 1161 (1958).

[10] "[A] lawyer who is asked to advise his client . . . may freely urge the statement of positions most favorable to the client just as long as there is reasonable basis for those positions." *ABA* Opinion *314 (1965).*

circumstances should give his professional opinion as to what the ultimate decisions of the courts would likely be as to the applicable law.

Duty *of the Lawyer to a Client*

EC 7-4 The advocate may urge any permissible construction of the law favorable to his client, without regard to his professional opinion as to the likelihood that the construction will ultimately prevai1,[11] His conduct is within the bounds of the law, and therefore permissible, if the position taken is supported by the law or is supportable by a good faith argument for an extension, modification, or reversal of the law. However, a lawyer is not justified in asserting a position in litigation that is frivolous.[12]

EC 7-5 A lawyer as adviser furthers the interest of his client by giving his professional opinion as to what he believes would likely be the ultimate decision of the courts on the matter at hand and by informing his client of the practical effect of such decision.[13] He may continue in the representation of his client even though his client has elected to pursue a course of conduct contrary to the advice of the lawyer so long as he does not thereby knowingly assist the client to engage in illegal conduct or to take a frivolous legal position. A lawyer should never encourage or aid his client to commit criminal acts or counsel his client on how to violate the law and avoid punishment therefor.[14]

EC 7-6 Whether the proposed action of a lawyer is within the bounds of the law may be a perplexing question when his client is contemplating a course of conduct having legal consequence that vary according to the client's intent, motive, or desires at the time of the action. Often a lawyer is asked to assist his client in developing evidence relevant to the state of mind of the client at a particular time. He may properly assist his client in the development and preservation of evidence of existing motive, intent, or desire; obviously, he may not do anything furthering the creation or preservation of false evidence. In many cases a lawyer may not be certain as to the state of mind of his client, and in those situations he should resolve reasonable doubts in favor of his client.

EC 7-7 In certain areas of legal representation not affecting the merits of the cause or substantially prejudicing the rights of a client, a lawyer is entitled to make decisions on his own. But otherwise the authority to make decisions is exclusively that of the client and, if made within the framework of the law, such decisions are binding on his lawyer. As typical examples in civil cases, it is for the client to decide whether he will accept a settlement offer or whether he will waive his right to plead an affirmative defense. A defense lawyer in a criminal case has the *duty* to advise his client fully on whether a particular plea to a charge appears to be desirable and as to the pros-

[11] "The lawyer . . . is not an umpire, but an advocate. He is under no duty to refrain from making every proper argument in support of any legal point because he is not convinced of its inherent soundness. . . . His personal belief in the soundness of his cause or of the authorities supporting it, is irrelevant." *ABA Opinion* 280 (1949).

"Counsel apparently misconceived his role. It was his duty to honorably present his client's contentions in the light most favorable to his client. Instead he presumed to advise the court as to the validity and sufficiency of prisoner's motion, by letter. We therefore conclude that the prisoner had no effective assistance of counsel and remand this case to the District Court with instructions to set aside the Judgment, appoint new counsel to represent the prisoner if he makes no objection thereto, and proceed anew." McCartney v. United States, 343 F.2d 471, 472 (9th Cir. 1965).

[12] "Here the court-appointed counsel had the transcript but refused to proceed with the appeal because he found no merit in it. . . . We cannot say that there was a finding of frivolity by either of the California courts or that counsel acted in any greater capacity than merely as *amicus curiae* which was condemned in *Ellis, supra.* Hence California's procedure did not furnish petitioner with counsel acting in the role of an advocate nor did it provide that full consideration and resolution of the matter as is obtained when counsel is acting in that capacity.

"The constitutional requirement of substantial equality and fair process can only be attained where counsel acts in the role of an active advocate in behalf of his client, as opposed to that of *amicus curiae.* The no-merit letter and the procedure it triggers do not reach that dignity. Counsel should, and can with honor and without conflict, be of more assistance to his client and to the court. His role as advocate requires that he support his client's appeal to the best of his ability. Of course, if counsel finds his case to be wholly frivolous, after a conscientious examination of it, he should so advise the court and request permission to withdraw. That request must, however, be accompanied by a brief referring to anything in the record that might arguably support the appeal. A copy of counsel's brief should be furnished the indigent and time allowed him to raise any points that he chooses; the court—not counsel—then proceeds, after a full examination of all the proceedings, to decide whether the case is wholly frivolous. If it so finds it may grant counsel's request to withdraw and dismiss the appeal insofar as federal requirements are concerned, or proceed to a decision on the merits, if state law so requires. On the other hand, if it finds any of the legal points arguable on their merits (and therefore not frivolous) it must, prior to decision, afford the indigent the assistance of counsel to argue the appeal." Anders v. California, 386 U.S. 738, 744, 18 L.Ed. 2d 493, 498, 87 S.Ct. 1396, 1399-1400 (1967), *rehearing denied,* 388 U.S. 924, 18 L.Ed.2d 1377, 87 S.Ct. 2094 *(1967).*

*See* Paul, *The Lawyer As a Tax Adviser,* 25 Rocky Mt. L. Rev. 412, 432 (1953).

[13] *See* ABA Canon 32.

[14] "For a lawyer to represent a syndicate notoriously engaged in the violation of the law for the purpose of advising the members how to break the law and at the same time escape it, is manifestly improper. While a lawyer may see to it that anyone accused of crime, no matter how serious and flagrant, has a fair trial, and present all available defenses, he may not co-operate in planning violations of the law. There is a sharp distinction, of course, between advising what can lawfully be done and advising how unlawful acts can be done in a way to avoid conviction. Where a lawyer accepts a retainer from an organization, known to be unlawful, and agrees in advance to defend its members when from time to time they are accused of crime arising out of its unlawful activities, this Is equally improper."

"See also *Opinion 155." ABA Opinion* 281 (1952).

pects of success on appeal, but it is for the client to decide what plea should be entered and whether an appeal should be taken.15

EC 7-8 A lawyer should exert his best efforts to insure that decisions of his client are made only after the client has been informed of relevant considerations. A lawyer ought to initiate this decision-making process if the client does not do so. Advice of a lawyer to his client need not be confined to purely legal considerations.[16] A lawyer should advise his client of the possible effect of each legal alternative.[17] A lawyer should bring to bear upon this decision-making process the fullness of his experience as well as his objective viewpoint's In assisting his client to reach a proper decision, it is often desirable for a lawyer to point out those factors which may lead to a decision that is morally just as well as legally permissible.[19] He may emphasize the possibility of harsh consequences that might result from assertion of legally permissible positions. In the final analysis, however, the lawyer should always remember that the decision whether to forego legally available objectives or methods because of non-legal factors is ultimately for the client and not for himself, In the event that the client in a non-adjudicatory matter insists upon a course of conduct that is contrary to the judgment and advice of the lawyer but not prohibited by Disciplinary Rules, the lawyer may withdraw from the employment.20

EC 7-9 In the exercise of his professional judgment on those decisions which are for his determination in the handling of a legal matter,[21] a lawyer should always act in a manner consistent with the best interests of his client.[22] However, when an action in the best interest of his client seems to him to be unjust, he may ask his client for permission to forego such action.23

EC 7-10 The duty of a lawyer to represent his client with zeal does not militate against his concurrent obligation to treat with consideration all persons involved in the legal process and to avoid the infliction of needless harm.

EC 7-11 The responsibilities of a lawyer may vary according to the intelligence, experience, mental condition or age of a client, the obligation of a public officer, or the nature of a particular proceeding. Examples include the representation of an illiterate or an incompetent, service as a public prosecutor or other government lawyer, and appearances before administrative and legislative bodies.

EC 7-12 Any mental or physical condition of a client that renders him incapable of making a considered judgment on his own behalf casts additional responsibilities upon his lawyer. Where an incompetent is acting through a guardian or other legal representative, a lawyer must look to such representative for those decisions which are normally the prerogative of the client to make. If a client under disability has no legal representative, his lawyer may be compelled in court proceedings to make decisions on behalf of the client. If the client is capable of understanding the matter in question or of contributing to the advancement of his interests, regardless of whether he is legally disqualified from performing certain acts, the lawyer should obtain from him all possible aid. If the disability of a client and the lack of a legal representative compel the lawyer to make decisions for his client, the lawyer should consider all

[15] *See* ABA Special Committee on Minimum Standards for the Administration of Criminal Justice, *Standards Relating to Pleas of Guilty* pp. 69-70 (1968).

[16] "First of all, a truly great lawyer is a wise counselor to all manner of men in the varied crises of their lives when they most need disinterested advice. Effective counseling necessarily involves a thoroughgoing knowledge of the principles of the law not merely as they appear in the books but as they actually operate in action." Vanderbilt, *The Five Functions of the Lawyer: Service to Clients and the Public,* 40 A.B.A.J. 31 (1954).

[17] "A lawyer should endeavor to obtain full knowledge of his client's cause before advising thereon. . . ." ABA Canon 8.

[18] "[I]n devising charters of collaborative effort the lawyer often acts where all of the affected parties are present as participants. But the lawyer also performs a similar function in situations where this is not so, as, for example, in planning estates and drafting wills. Here the instrument defining the terms of collaboration may affect persons not present and often not born. Yet here, too, the good lawyer does not serve merely as a legal conduit for his client's desires, but as a wise counselor, experienced in the art of devising arrangements that will put in workable order the entangled affairs and interests of human beings." *Professional Responsibility: Report of the Joint Conference,* 44 A.B.A.J. 1159, 1162 (1958).

[19] *See* ABA Canon 8.

"Vital as is the lawyer's role in adjudication, it should not be thought that it is only as an advocate pleading in open court that he contributes to the administration of the law. The most effective realization of the law's aims often takes place in the attorney's office, where litigation is forestalled by anticipating its outcome, where the lawyer's quiet counsel takes the place of public force. Contrary to popular belief, the compliance with the law thus brought about is not generally lip-serving and narrow, for aj reminding him of its long-run costs the lawyer often deters his client from a course of conduct technically permissible under existing law, though Inconsistent with its underlying spirit and purpose." *Professional Responsibility: Report of the Joint Conference,* 44 A.B.A.J. 1159, 1161 (1958).

[20] "My summation of Judge Sharswood's view of the advocate's duty to the client is that he owes to the client the duty to use all legal means in support of the client's case. However, at the same time Judge Sharswood recognized that many advocates would find this obligation unbearable if applicable without exception. Therefore, the individual lawyer is given the choice of representing his client fully within the bounds set by the law *or of telling his client that he cannot do so,* so that the client may obtain another attorney if he wishes." Thode, *The Ethical Standard for the Advocate,* 39 Texas L.Rev. 575, 582 (1961).
*Cf.* Code of Professional Responsibility, DR 2-110 (C).

[21] *See* ABA Canon 24.

[22] Thode, *The Ethical Standard for the Advocate,* 39 Texas L.Rev. 575, 592 (1961).

[23] *Cf. ABA Opinions* 253 (1946) and 178 (1938).

circumstances then prevailing and act with care to safeguard and advance the interests of his client. But obviously a lawyer cannot perform any act or make any decision which the law requires his client to perform or make, either acting for himself if competent, or by a duly constituted representative if legally incompetent.

EC 7-13 The responsibility of a public prosecutor differs from that of the usual advocate; his duty is to seek justice, not merely to convict. [24] This special duty exists because: (1) the prosecutor represents the sovereign and therefore should use restraint in the discretionary exercise of governmental powers, such as in the selection of cases to prosecute; (2) during trial the prosecutor is not only an advocate but he also may make decisions normally made by an individual client, and those affecting the public interest should be fair to all; and (3) in our system of criminal justice the accused is to be given the benefit of all reasonable doubts. With respect to evidence and witnesses, the prosecutor has responsibilities different from those of a lawyer in private practice: the prosecutor should make timely disclosure to the defense of available evidence, known to him, that tends to negate the guilt of the accused, mitigate the degree of the offense, or reduce the punishment. Further, a prosecutor should not intentionally avoid pursuit of evidence merely because he believes it will damage the prosecution's case or aid the accused.

EC 7-14 A government lawyer who has discretionary power relative to litigation should refrain from instituting or continuing litigation that is obviously unfair. A government lawyer not having such discretionary power who believes there is lack of merit in a controversy submitted to him should so advise his superiors and recommend the avoidance of unfair litigation. A government lawyer in a civil action or administrative proceeding has the responsibility to seek justice and to develop a full and fair record, and he should not use his position or the economic power of the government to harass parties or to bring about unjust settlements or results.

EC 7-15 The nature and purpose of proceedings before administrative agencies vary widely. The proceedings may be legislative or quasi-judicial, or a combination of both. They may be *ex parte* in character, in which event they may originate either at the instance of the agency or upon motion of an interested party. The scope of an inquiry may be purely investigative or it may be truly adversary looking toward the adjudication of specific rights of a party or of classes of parties. The foregoing are but examples of some of the types of proceedings conducted by administrative agencies. A lawyer appearing before an administrative agency, [25] regardless of the nature of the proceeding it is conducting, has the continuing duty to advance the cause of his client within the bounds of the law. [26] Where the applicable rules of the agency impose specific obligations upon a lawyer, it is his duty to comply therewith, unless the lawyer has a legitimate basis for challenging the validity thereof. In all appearances before administrative agencies, a lawyer should identify himself, his client if identity of his client is not privileged, [27] and the representative nature of his appearance. It is not improper, however, for a lawyer to seek from an agency information available to the public without identifying his client.

EC 7-16 The primary business of a legislative body is to enact laws rather than to adjudicate controversies, although on occasion the activities of a legislative body may take on the characteristics of an adversary proceeding, particularly in investigative and impeachment matters. The role of a lawyer supporting or opposing proposed legislation normally is quite different from his role in representing a person under investigation or on trial by a legislative body. When a lawyer appears in connection with proposed legislation, he seeks to affect the lawmaking process, but when he appears on behalf of a client in investigatory or impeachment proceedings, he is concerned with the protection of the rights of *his* client. In either event, he should identify himself and his client, if identity of his client is not privileged, and should comply with applicable laws and legislative rules.28

EC 7-17 The obligation of loyalty to his client applies only to a lawyer in the discharge of his professional duties and implies no obligation to adopt a personal viewpoint favorable to the in-

[24] *See* ABA Canon 5 and Berger v. United States, 295 U.S. 78, 79 L. Ed. 1314, 55 S.Ct. 629 (1935).

"The public prosecutor cannot take as a guide for the conduct of his office the standards of an attorney appearing on behalf of an individual client. The freedom elsewhere wisely granted to a partisan advocate must be severely curtailed if the prosecutor's duties are to be properly discharged. The public prosecutor must recall that he occupies a dual role, being obligated, on the one hand, to furnish that adversary element essential to the informed decision of any controversy, but being possessed, on the other, of important governmental powers that are pledged to the accomplishment of one objective only, that of impartial justice. Where the prosecutor is recreant to the trust implicit in his office, he undermines confidence, not only in his profession, but in government and the very ideal of justice itself." *Professional Responsibility : Report of the Joint Conference,* 44 A.B.A.J. 1159, 1218 (1958).

"The prosecuting attorney Is the attorney for the state, and it is his primary duty not to convict but to see that justice *is* done." *ABA Opinion* 150 (1936).

[25] As to appearances before a department of government, Canon 26 provides : "A lawyer openly . . . may render professional services . . . in advocacy of claims before departments of government, upon the same principles of ethics which justify his appearance before the Courts

[26] "But as an advocate before a service which itself represents the adversary point of view, where his client's case is fairly arguable, a lawyer is under no duty to disclose its weaknesses, any more than he would be to make such a disclosure to a brother lawyer. The limitations within which he must operate are best expressed in Canon 22 . . . ." *ABA Opinion* 314 (1965).

[27] *See* Baird v. Koerner, 279 F.2d 623 (9th Cir. 1960).

[28] *See* ABA Canon 26.

terests or desires of his client.[29] While a lawyer must act always with circumspection in order that his conduct will not adversely affect the rights of a client in a matter he is then handling, he may take positions on public issues and espouse legal reforms he favors without regard to the individual views of any client.

EC 7-18 The legal system in its broadest sense functions best when persons in need of legal advice or assistance are represented by their own counsel. For this reason a lawyer should not communicate on the subject matter of the representation of his client with a person he knows to be represented in the matter by a lawyer, unless pursuant to law or rule of court or unless he has the consent of the lawyer for that person.[30] If one is not represented by counsel, a lawyer representing another may have to deal directly with the unrepresented person; in such an instance, a lawyer should not undertake to give advice to the person who is attempting to represent himself,[31] except that he may advise him to obtain a lawyer.

*Duty of the Lawyer to the Adversary System of Justice*

EC 7-19 Our legal system provides for the adjudication of disputes governed by the rules of substantive, evidentiary, and procedural law. An adversary presentation counters the natural human tendency to judge too swiftly in terms of the familiar that which is not yet fully known;[32] the advocate, by his zealous preparation and presentation of facts and law, enables the tribunal to come to the hearing with an open and neutral mind and to render impartial judgments.[33] The duty of a lawyer to his client and his duty to the legal system are the same: to represent his client zealously within the bounds of the law.[34]

EC 7-20 In order to function properly, our adjudicative process requires an informed, impartial tribunal capable of administering justice promptly and efficiently[35] according to procedures that command public confidence and respect.[38] Not only must there be competent, adverse presentation of evidence and issues, but a tribunal must be aided by rules appropriate to an effective and dignified process. The procedures under which tribunals operate in our adversary system have been prescribed largely by legislative enactments, court rules and decisions, and administrative rules. Through the years certain concepts of proper professional conduct have become rules of law applicable to the adversary adjudicative process. Many of these concepts are the bases for standards of professional conduct set forth in the Disciplinary Rules.

EC 7-21 The civil adjudicative process is primarily designed for the settlement of disputes between parties, while the criminal process is designed for the protection of society as a whole. Threatening to use, or using, the criminal process to coerce adjustment of private civil claims or controversies is a subversion of that process;[37] further, the person against whom the criminal process is so misused may be deterred from asserting his legal rights and thus the usefulness of the civil process in settling private disputes is impaired. As in all cases of abuse of judicial process, the improper use of criminal process tends to diminish public confidence in our legal system.

EC 7-22 Respect for judicial rulings is essential to the proper administration of justice; however, a litigant or his lawyer may, in good faith and

[29] "Law should be so practiced that the lawyer remains free to make up his own mind how he will vote, what causes he will support, what economic and political philosophy he will espouse. It is one of the glories of the profession that it admits of this freedom. Distinguished examples can be cited of lawyers whose views were at variance from those of their clients, lawyers whose skill and wisdom make them valued advisers to those who had little sympathy with their views as citizens." *Professional Responsibility: Report of the Joint Conference,* 44 A.B.A.J. 1159, 1217 (1958).

"No doubt some tax lawyers feel constrained to abstain from activities on behalf of a better tax system because they think that their clients may object. Clients have no right to object if the tax adviser handles their affairs competently and faithfully and independently of his private views as to tax policy. They buy his expert services, not his private opinions or his silence on issues that gravely affect the public interest." Paul, *The Lawyer as a Tax Adviser,* 25 Rocky Mt.L.Rev. 412, 434 (1953).

[30] See ABA Canon 9.

[31] *Id.*

[32] *See Professional Responsibility: Report of the Joint Conference,* 44 A.B.A.J. 1159, 1160 (1958).

[33] "Without the participation of someone who can act responsibly for each of the parties, this essential narrowing of the issues [by exchange of written pleadings or stipulations of counsel] becomes impossible. But here again the true significance of partisan advocacy lies deeper, touching once more the integrity of the adjudicative process itself. It is only through the advocate's participation that the hearing may remain in fact what it purports to be in theory : a public trial of the facts and issues. Each advocate comes to the hearing prepared to present his proofs and arguments, knowing at the same time that his arguments may fail to persuade and that his proof may be rejected as inadequate. . . . The deciding tribunal, on the other hand, comes to the hearing uncommitted. It has not represented to the public that any fact can be proved, that any argument is sound, or that any particular way of stating a litigant's case is the most effective expression of its merits." *Professional Responsibility: Report of the Joint Conference,* 44 A.B.A.J. 1159, 1160-61 (1958).

[34] *Cf.* ABA Canons 15 and 32.

[35] *Cf.* ABA Canon 21.

[36] See *Professional Responsibility: Report of the Joint Conference,* 44 A.B.A.J. 1159, 1216 (1958).

[37] "We are of the opinion that the letter in question was improper, and that in writing and sending it respondent was guilty of unprofessional conduct. This court has heretofore expressed its disapproval of using threats of criminal prosecution as a means of forcing settlement of civil claims. . . .

"Respondent has been guilty of a violation of a principle which condemns any confusion of threats of criminal prosecution with the enforcement of civil claims. For this misconduct he should be severely censured." Matter of Gelman, 230 App.Div. 524, 527, 245 N.Y.S. 416, 419 (1930).

within the framework of the law, take steps to test the correctness of a ruling of a tribunal.[38]

EC 7-23 The complexity of law often makes it difficult for a tribunal to be fully informed unless the pertinent law is presented by the lawyers in the cause. A tribunal that is fully informed on the applicable law is better able to make a fair and accurate determination of the matter before it. The adversary system contemplates that each lawyer will present and argue the existing law in the light most favorable to his client.[39] Where a lawyer knows of legal authority in the controlling jurisdiction directly adverse to the position of his client, he should inform the tribunal of its existence unless his adversary has done so; but, having made such disclosure, he may challenge its soundness in whole or in part.[40]

EC 7-24 In order to bring about just and informed decisions, evidentiary and procedural rules have been established by tribunals to permit the inclusion of relevant evidence and argument and the exclusion of all other considerations. The expression by a lawyer of his personal opinion as to the justness of a cause, as to the credibility of a witness, as to the culpability of a civil litigant, or as to the guilt or innocence of an accused is not a proper subject for argument to the trier of fact.[41] It is improper as to factual matters because admissible evidence possessed by a lawyer should be presented only as sworn testimony. It is improper as to all other matters because, were the rules otherwise, the silence of a lawyer on a given occasion could be construed unfavorably to his client. However, a lawyer may argue, on his analysis of the evidence, for any position or conclusion with respect to any of the foregoing matters.

EC 7-25 Rules of evidence and procedure are designed to lead to just decisions and are part of the framework of the law. Thus while a lawyer may take steps in good faith and within the framework of the law to test the validity of rules, he is not justified in consciously violating such rules and he should be diligent in his efforts to guard against his unintentional violation of them.[42] As examples, a lawyer should subscribe to or verify only those pleadings that he believes are in compliance with applicable law and rules; a lawyer should not make any prefatory statement before a tribunal in regard to the purported facts of the case on trial unless he believes that his statement will be supported by admissible evidence; a lawyer should not ask a witness a question solely for the purpose of harassing or embarrassing him*, and a lawyer should not by subterfuge put before a jury matters which it cannot properly consider.

EC 7-26 The law and Disciplinary Rules prohibit the use of fraudulent, false, or perjured testimony or evidence.[43] A lawyer who knowingly [44] participates in introduction of such testimony or evidence is subject to discipline. A lawyer should, however, present any admissible evidence his client desires to have presented unless he knows, or from facts within his knowledge should know, that such testimony or evidence is false, fraudulent, or perjured.[45]

EC 7-27 Because it interferes with the proper administration of justice, a lawyer should not suppress evidence that he or his client has a legal obligation to reveal or produce. In like manner, a lawyer should not advise or cause a person to secrete himself or to leave the jurisdiction of a tribunal for the purpose of making him unavailable as a witness therein.[46]

EC 7-28 Witnesses should always testify truthfully [47] and should be free from any financial inducements that might tempt them to do other-

[38] "An attorney has the duty to protect the interests of his client. He has a right to press legitimate argument and to protest an erroneous ruling." Gallagher v. Municipal Court, 31 Ca1.2d 784, 796, 192 P.2d 905, 913 (1948).

"There must be protection, however, in the far more frequent case of the attorney who stands on his rights and combats the order in good faith and without disrespect believing with good cause that it is void, for it is here that the independence of the bar becomes valuable." Note, 39 Colum.L.Rev. 433, 438 (1939).

[39] "Too many do not understand that accomplishment of the layman's abstract ideas of justice is the function of the judge and jury, and that it is the lawyer's sworn duty to portray his client's case in its most favorable light." Rochelle and Payne, *The Struggle for Public Understanding,* 25 Texas B.J. 109, 159 (1962).

[40] "We are of the opinion that this Canon requires the lawyer to disclose such decisions [that are adverse to his client's contentions] to the court. He may, of course, after doing so, challenge the soundness of the decisions or present reasons which he believes would warrant the court in not following them in the pending case." *ABA Opinion* 146 (1935).

*Cf. ABA* Opinion 280 (1949) and Thode, *The Ethical Standard for the Advocate,* 39 Texas L. Rev. 575, 585-86 (1961).

[41] *See* ABA Canon 15.

"The traditional duty of an advocate is that he honorably uphold the contentions of his client. He should not voluntarily undermine them." Harders v. State of California, 373 F.2d 839, 842 (9th Cir. 1967).

[42] *See* ABA Canon 22.

[43] *Id. Cf.* ABA Canon 41.

[44] *See generally ABA Opinion* 287 (1953) as to a lawyer's duty when he unknowingly participates in introducing perjured testimony.

[45] "Under any standard of proper ethical conduct an attorney should not sit by silently and permit his client to commit what may have been perjury, and which certainly would mislead the court and the opposing party on a matter vital to the issue under consideration. .

"Respondent next urges that it was his duty to observe the utmost good faith toward his client, and therefore he could not divulge any confidential information. This duty to the client of course does not extend to the point of authorizing collaboration with him in the commission of fraud." In re Carroll, 244 S.W.2d 474, 474-75 (Ky. 1951).

[46] *See* ABA Canon 5; *cf. ABA Opinion* 131 (1935).

[47] *Cf.* ABA Canon 39.

wise.[48] A lawyer should not pay or agree to pay a non-expert witness an amount in excess of reimbursement for expenses and financial loss incident to his being a witness; however, a lawyer may pay or agree to pay an expert witness a reasonable fee for his services as an expert. But in no event should a lawyer pay or agree to pay a contingent fee to any witness. A lawyer should exercise reasonable diligence to see that his client and lay associates conform to these standards.49

EC 7-29 To safeguard the impartiality that is essential to the judicial process, veniremen and jurors should be protected against extraneous influences.[50] When impartiality is present, public confidence in the judicial system is enhanced. There should be no extrajudicial communication with veniremen prior to trial or with jurors during trial by or on behalf of a lawyer connected with the case. Furthermore, a lawyer who is not connected with the case should not communicate with or cause another to communicate with a veniremen or a juror about the case. After the trial, communication by a lawyer with jurors is permitted so long as he refrains from asking questions or making comments that tend to harass or embarrass the juror [51] or to influence actions of the juror in future cases. Were a lawyer to be prohibited from communicating after trial with a juror, he could not ascertain if the verdict might be subject to legal challenge, in which event the invalidity of a verdict might go undetected.[52] When an extrajudicial communication by a lawyer with a juror is permitted by law, it should be made considerately and with deference to the personal feelings of the juror.

EC 7-30 Vexatious or harassing investigations of veniremen or jurors seriously impair the effectiveness of our jury system. For this reason, a lawyer or anyone on his behalf who conducts an investigation of veniremen or jurors should act with circumspection and restraint.

EC 7-31 Communications with or investigations of members of families of veniremen or jurors by a lawyer or by anyone on his behalf are subject to the restrictions imposed upon the lawyer with respect to his communications with or investigations of veniremen and jurors.

EC 7-32 Because of his duty to aid in preserving the integrity of the jury system, a lawyer who learns of improper conduct by or towards a veniremen, a juror, or a member of the family of either should make a prompt report to the court regarding such conduct.

EC 7-33 A goal of our legal system is that each party shall have his case, criminal or civil, adjudicated by an impartial tribunal. The attainment of this goal may be defeated by dissemination of news or comments which tend to influence judge or jury.[53] Such news or comments may

[48] "The prevalence of perjury is a serious menace to the administration of justice, to prevent which no means have as yet been satisfactorily devised. But there certainly can be no greater incentive to perjury than to allow a party to make payments to its opponents witnesses under any guise or on any excuse, and at least attorneys who are officers of the court to aid it in the administration of justice, must keep themselves clear of any connection which in the slightest degree tends to induce witnesses to testify in favor of their clients." In re Robinson, 151 App.Div. 589, 600, 136 N.Y.S. 548, 556-57 (1912), *aff'd*, 209 N.Y. 354, 103 N.E. 160 (1913).

[49] "It will not do for an attorney who seeks to justify himself against charges of this kind to show that he has escaped criminal responsibility under the Penal Law, nor can he blindly shut his eyes to a system which tends to suborn witnesses, to produce perjured testimony, and to suppress the truth. He has an active affirmative duty to protect the administration of justice from perjury and fraud, and that duty is not performed by allowing his subordinates and assistants to attempt to subvert justice and procure results for his clients based upon false testimony and perjured witnesses." *Id.*, 151 App.Div. at 592, 136 N.Y.S. at 551.

[50] *See* ABA Canon 23.

[51] "[I] t is unfair to jurors to permit a disappointed litigant to pick over their private associations in search of something to discredit them and their verdict. And it would be unfair to the public too if jurors should understand that they cannot convict a man of means without risking an inquiry of that kind by paid investigators, with, to boot, the distortions an inquiry of that kind can produce." State v. LaFera, 42 N.J. 97, 107, 199 A.2d 630, 636 (1964).

[52] *ABA Opinion* 319 (1968) points out that "[m]any courts today, and the trend is in this direction, allow the testimony of jurors as to all irregularities in and out of the courtroom except those irregularities whose existence can be determined only by exploring the consciousness of a single particular juror, New Jersey v. Kociolek, 20 N.J. 92, 118 A.2d 812 (1955). Model Code of Evidence Rule 301. Certainly as to states in which the testimony and affidavits of jurors may be received in support of or against a motion for new trial, a lawyer, in his obligation to protect his client, must have the tools for ascertaining whether or not grounds for a new trial exist and it is not unethical for him to talk to and question jurors."

[53] *Generally see* ABA Advisory Committee on Fair Trial and Free Press, Standards Relating to Fair Trial and Free Press (1966).

"[T]he trial court might well have proscribed extrajudicial statements by any lawyer, party, witness, or court official which divulged prejudicial matters . . See State v. Van Dwyne, 43 N.J. 369, 389, 204 A.2d 841, 852 (1964), in which the court interpreted Canon 20 of the American Bar Association's Canons of Professional Ethics to prohibit such statements. Being advised of the great public interest in the case, the mass coverage of the press, and the potential prejudicial impact of publicity, the court could also have requested the appropriate city and county officials to promulgate a regulation with respect to dissemination of information about the case by their employees. In addition, reporters who wrote or broadcast prejudicial stories, could have been warned as to the impropriety of publishing material not introduced in the proceedings. . . . In this manner, Sheppard's right to a trial free from outside interference would have been given added protection without corresponding curtailment of the news media. Had the judge, the other officers of the court, and the police placed the interest of justice first, the news media would have soon learned to be content with the task of reporting the case as it unfolded in the courtroom—not pieced together from extrajudicial statements." Sheppard v. Maxwell, 384 U.S. 333, 361-62, 16 L. E.2d 600, 619-20, 86 S.Ct. 1507, 1521-22 (1966).

lawyer and render appropriate accounts to his client regarding them.

(4) Promptly pay or deliver to the client as requested by a client the funds, securities, or other properties in the possession of the lawyer which the client is entitled to receive.

## DEFINITIONS*

As used in the Disciplinary Rules of the Code of Professional Responsibility:

(1) "Differing interests" include every interest that will adversely affect either the judgment or the loyalty of a lawyer to a client, whether it be a conflicting, inconsistent, diverse, or other interest.

(2) "Law firm" includes a professional legal corporation.

"Person" includes a corporation, an association, a trust, a partnership, and any other organization or legal entity.

"Professional legal corporation" means a corporation, or an association treated as a corporation, authorized by law to practice law for profit.

"State" includes the District of Columbia, Puerto Rico, and other federal territories and possessions.

"Tribunal" includes all courts and all other ad judicatory bodies.

"A bar association representative of the general bar" includes a bar association of specialists as referred to in DR 2-105(A) (1) or (4).

* "Confidence" and "secret" are defined in DR 4-101(A).

# CANONS OF JUDICIAL ETHICS *

With Amendments to January 1, 1968

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Ancient Precedents.

"And I charged your judges at that time, saying Hear the causes between your brethren, and judge righteously between every man and his brother, and the stranger that is with him.

"Ye shall not respect persons in judgment; but ye shall hear the small as well as the great; ye shall not be afraid of the face of man; for the judgment is God's; and the cause that is too hard for you, bring it unto me, and I wil hear it"—*Deuteronomy,* I, 16-17.

"Thou shalt not wrest judgment; thou shat not respect persons, neither take a gift; for a gift doth blind the eyes of the wise, and pervert the words of the righteous."—Deuteronomy, XVI, 19.

"We will not make any justiciaries, constables, sheriffs or bailiffs, but from those who understand the law of the realm and are well disposed to observe *it."—Magna Charta,* XLV.

"Judges ought to remember that their office is *jus dicere* not *jus dare;* to interpret law, and not to make law, or give law." .

"Judges ought to be more learned than witty; more reve-end than plausible; and more advised than confident. Above all things, integrity is their portion and proper virtue." . .

"Patience and gravity of hearing is an essential part of justice; and an over speaking judge is no well-tuned cymbal. It is no grace to a judge first to find that which he might have heard in due time from the Bar, or to show quickness of conceit in cutting off evidence or counsel too short; or to prevent information by questions though pertinent."

"The place of justice is a hallowed place; and therefore not only the Bench, but the foot pare and precincts and purprise thereof ought to be preserved without scandal and corruption." . —*Bacon's Essay "Of Judicature."*

Preamble.

In addition to the Canons for Professional Conduct of Lawyers which it has formulated and adopted, the American Bar Association, mindful that the character and conduct of a judge should never be objects of indifference, and that declared ethical standards tend to become habits of life, deems it desirable to set forth its views respecting those principles which should govern the personal practice of members of the judiciary in the administration of their office. The Association accordingly adopts the following Canons, the spirit of which it suggests as a proper guide and reminder for judges, and as indicating what the people have a right to expect from them.

1. Relations of the Judiciary.

The assumption of the office of judge casts upon the incumbent duties in respect to his personal conduct which concern his re[1]ation to the state and its inhabit'nts, the litigants before him, the principles of law, the practitioners of law in his court, and the witnesses, jurors and attendants who aid him in the administration of its functions.

2. The Public Interest.

Courts exist to promote justice, and thus to serve the public interest. Their administration should be speedy and careful. Every judge should at all times be alert in his rulings and in the conduct of the business of the court, so far as he can, to make it useful to litigants and to the community. He should avoid unconsciously falling into the attitude of mind that the litigants are made for the courts instead of the courts for the litigants.

3. Constitutional Obligations.

It is the duty of all judges in the United States to support the federal Constitution and that of the state whose laws they administer; in so doing, they should fearlessly observe and apply fundamental limitations and guarantees.

4. Avoidance of Impropriety.

A judge's official conduct should be free from impropriety and the appearance of impropriety; he should avoid infractions of law; and his personal behavior, not only upon the Bench and in the performance of judicial duties, but also in his everyday life, should be beyond reproach.

5. Essential Conduct.

A judge should be temperate, attentive, patient, impartial, and, since he is to administer the law and apply it to the facts, he should be studious of the principles of the law and diligent in endeavoring to ascertain the facts.

6. Industry.

A judge should exhibit an industry and application commensurate with the duties imposed upon him.

* These Canons, to and including Canon 34, were adopted by the American Bar Association at its Forty-S-venth Annual Meeting, at Philadelphia, Pennsylvania, on July 9. 1924. The Committee of the Association which prepared the Canons was appointed in 1922, and composed of the following : William H. Taft, District of Columbia, Chairman ; Leslie C. Cornish, Maine; Robert von Moschzisker, Pennsylvania ; Charles A. Boston. New York ; and Garret W. McEnerney, California. George Sutherland, of Utah, originally a member of the Cummittee, retired and was succeeded by Mr. McEnerney. In 1923, Frank M. Angellotti, of California, took the place .of Mr. McEnerney.

Canons 28 and 30 were amended at the Fifty-Sixth Annual Meeting, Grand Rapids, Michigan, August 30-September 1, 1933 Canon 28 was further amended at the Seventy-Third Annual' Meeting, Washington, D. C., September 20. 1950. Canons 35 and 36 were adopted at the Sixtieth Annual Meeting, at Kansas City, Missouri, September 30. 1937. Canon 35 was amended at San Francisco. Calif., Sept. 1952.

7. Promptness.

A judge should be prompt in the performance of his judicial duties, recognizing that the time of litigants, jurors and attorneys is of value and that habitual lack of punctuality on his part justifies dissatisfaction with the administration of the business of the court.

8. Court Organization.

A judge should organize the court with a view to the prompt and convenient dispatch of its business and he should not tolerate abuses and neglect by clerks, and other assistants who are sometimes prone to presume too much upon his good natured acquiescence by reason of friendly association with him.

It is desirable too, where the judicial system permits, that he should cooperate with other judges of the same court, and in other courts, as members of a single judicial system, to promote the more satisfactory administration of justice.

9. Consideration for Jurors and Others.

A judge should be considerate of jurors, witnesses and others in attendance upon the court.

10. Courtesy and Civility.

A judge should be courteous to counsel, especially to those who are young and inexperienced, and also to all others appearing or concerned in the administration of justice in the court.

He should also require, and so far as his power extends, enforce on the part of clerks, court officers and counsel civility and courtesy to the court and to jurors, witnesses, litigants and others having business in the court.

11. Unprofessional Conduct of Attorneys and Counsel.

A judge should utilize his opportunities to criticise and correct unprofessional conduct of attor, neys and counsellors, brought to his attention; and, if adverse comment is not a sufficient corrective, should send the matter at once to the proper investigating and disciplinary authorities.

12. Appointees of the Judiciary and Their Compensation.

Trustees, receivers, masters, referees, guardians and other persons appointed by a judge to aid in the administration of justice should have the strictest probity and impartiality and should be selected with a view solely to their character and fitness. The power of making such appointments should not be exercised by him for personal or partisan advantage. He should not permit his appointments to be controlled by others than himself. He should also avoid nepotism and undue favoritism in his appointments.

While not hesitating to fix or approve just amounts, he should be most scrupulous in granting or approving compensation for the services or charges of such appointees to avoid excessive allowances, whether or not excepted to or complained of. He cannot rid himself of this responsibility by the consent of counsel.

13. Kinship or Influence.

A judge should not act in a controversy where a near relative is a party; he should not suffer his conduct to justify the impression that any person can improperly influence him or unduly enjoy his favor, or that he is affected by the kinship, rank, position or influence of any party or other person.

14. Independence.

A judge should not be swayed by partisan demands, public clamor or considerations of personal popularity or notoriety, nor be apprehensive of unjust criticism.

15. Interference in Conduct of Trial.

A judge may properly intervene in a trial of a case to promote expedition, and prevent unnecessary waste of time, or to clear up some obscurity, but he should bear in mind that his undue interference, impatience, or participation in the examination of witnesses, or a severe attitude on his part toward witnesses, especially those who are excited or terrified by the unusual circumstances of a trial, may tend to prevent the proper presentation of the cause, or the ascertainment of the truth in respect thereto.

Conversation between the judge and counsel in court is often necessary, but the judge should be studious to avoid controversies which are apt to obscure the merits of the dispute between litigants and lead to its unjust disposition. In addressing counsel, litigants, or witnesses, he should avoid a controversial manner or tone.

He should avoid interruptions of counsel in their arguments except to clarify his mind as to their positions, and he should not be tempted to the unnecessary display of learning or a premature judgment.

16. Ex parte Applications.

A judge should discourage *ex parte* hearings of applications for injunctions and receiverships where the order may work detriment to absent parties; he should act upon such *ex parte* applications only where the necessity for quick action is clearly shown; if this be demonstrated, then he should endeavor to counteract the effect of the absence of opposing counsel by a scrupulous cross-examination and investigation as to the facts and the principles of law on which the application is based, granting relief only when fully satisfied that the law permits it and the emergency demands it. He should remember that an injunction is a limitation upon the freedom of action of defendants and should not be granted lightly or inadvisedly. One applying for such relief must sustain the burden of showing clearly its necessity and this burden is increased in the absence of the party whose freedom of action is sought to be restrained even though only temporarily.

17. Ex parte Communications.

A judge should not permit private interviews, arguments or communications designed to influence his judicial action, where interests to

be affected thereby are not represented before him, except in cases where provision is made by law for *ex parte* application.

While the conditions under which briefs of argument are to be received are largely matters of local rule or practice, he should not permit the contents of such brief presented to him to be concealed from opposing counsel. Ordinarily all communications of counsel to the judge intended or calculated to influence action should be made known to opposing counsel.

18. Continuances.

Delay in the administration of justice is a common cause of complaint; counsel are frequently responsible for this delay. A judge, without being arbitrary or forcing cases unreasonably or unjustly to trial when unprepared, to the detriment of parties, may well endeavor to hold counsel to a proper appreciation of their duties to the public interest, to their own clients, and to the adverse party and his counsel, so as to enforce due diligence in the dispatch of business before the court.

19. Judicial Opinions.

In disposing of controverted cases, a judge should indicate the reasons for his action in an opinion showing that he has not disregarded or overlooked serious arguments of counsel. He thus shows his full understanding of the case, avoids the suspicion of arbitrary conclusion, promotes confidence in his intellectual integrity and may contribute useful precedent to the growth of the law.

It is desirable that Courts of Appeals in reversing cases and granting new trials should so indicate their views on questions of law argued before them and necessarily arising in the controversy that upon the new trial counsel may be aided to avoid the repetition of erroneous positions of law and shall not be left in doubt by the failure of the court to decide such questions.

But the volume of reported decisions is such and is so rapidly increasing that in writing opinions which are to be published judges may well take this fact into consideration, and curtail them accordingly, without substantially departing from the principles stated above.

It is of high importance that judges constituting a court of last resort should use effort and self-restraint to promote solidarity of conclusion and the consequent influence of judicial decision. A judge should not yield to pride of opinion or value more highly his individual reputation than that of the court to which he should be loyal. Except in case of conscientious difference of opinion on fundamental principle, dissenting opinions should be discouraged in courts of last resort.

20. Influence of Decisions Upon the Development of the Law.

A judge should be mindful that his duty is the application of general law to particular instances, that ours is a government of law and not of men, and that he violates his duty as a minister of justice under such a system if he seeks to do what he may personally consider substantial justice in a particular case and disregards the general law as he knows it to be binding on him. Such action may become a precedent unsettling accepted principles and may have detrimental consequences beyond the immediate controversy. He should administer his office with a due regard to the integrity of the system of the law itself, remembering that he is not a depositary of arbitrary power, but a judge under the sanction of law.

21. Idiosyncrasies and Inconsistencies.

Justice should not be moulded by the individual idiosyncrasies of those who administer it. A judge should adopt the usual and expected method of doing justice, and not seek to be extreme or peculiar in his judgments, or spectacular or sensational in the conduct of the court. Though vested with discretion in the imposition of mild or severe sentences he should not compel persons brought before him to submit to some humiliating act or discipline of his own devising, without authority of law, because he thinks it will have a beneficial corrective influence.

In imposing sentence he should endeavor to conform to a reasonable standard of punishment and should not seek popularity or publicity either by exceptional severity or undue leniency.

22. Review.

In order that a litigant may secure the full benefit of the right of review accorded to him by law, a trial judge should scrupulously grant to the defeated party opportunity to present the questions arising upon the trial exactly as they arose, were presented, and decided, by full and fair bill of exceptions or otherwise; any failure in this regard on the part of the judge is peculiarly worthy of condemnation because the wrong done may be irremediable.

23. Legislation.

A judge has exceptional opportunity to observe the operation of statutes, especially those relating to practice, and to ascertain whether they tend to impede the just disposition of controversies; and he may well contribute to the public interest by advising those having authority to remedy defects of procedure, of the result of his observation and experience.

24. Inconsistent Obligations.

A judge should not accept inconsistent duties; nor incur obligations, pecuniary or otherwise, which will in any way interfere or appear to interfere with his devotion to the expeditious and proper administration of his official functions.

25. Business Promotions and Solicitations for Charity.

A judge should avoid giving ground for any reasonable suspicion that he is utilizing the power or prestige of his office to persuade or coerce others to patronize or contribute, either to the success of private business ventures, or to charitable enterprises. He should, therefore, not enter into such private business, or pursue such a course of conduct, as would justify such suspicion, nor use the power of his office or the influence of his name to promote the business interests of others; he should not solicit for charities, nor should he enter into any business relation which, in the normal course of events reasonably to be expected, might bring his personal interest into conflict with the impartial performance of his official duties.

26. Personal Investments and Relations.

A judge should abstain from making personal investments in enterprises which are apt to be involved in litigation in the court; and, after his accession to the Bench, he should not retain such investments previously made, longer than a period sufficient to enable him to dispose of them without serious loss. It is desirable that he should, so far as reasonably possible, refrain from all relations which would normally tend to arouse the suspicion that such relations warp or bias his judgment, or prevent his impartial attitude of mind in the administration of his judicial duties.

He should not utilize information coming to him in a judicial capacity for purposes of speculation; and it detracts from the public confidence in his integrity and the soundness of his judicial judgment for him at any time to become a speculative investor upon the hazard of a margin.

27. Executorships and Trusteeships.

While a judge is not disqualified from holding executorships or trusteeships, he should not accept or continue to hold any fiduciary or other position if the holding of it would interfere or seem to interfere with the proper performance of his judicial duties, or if the business interests of those represented require investments in enterprises that are apt to come before him judicially, or to be involved in questions of law to be determined by him.

28. Partisan Politics.*

While entitled to entertain his personal views of political questions, and while not required to surrender his rights or opinions as a citizen, it is inevitable that suspicion of being warped by political bias will attach to a judge who becomes the active promoter of the interests of one political party as against another. He should avoid making political speeches, making or soliciting payment of assessments or contributions to party funds, the public endorsement of candidates for political office and participation in party conventions.

He should neither accept nor retain a place on any party committee nor act as party leader, nor engage generally in partisan activities.

Where, however, it is necessary for judges to be nominated and elected as candidates of a political party, nothing herein contained shall prevent the judge from attending or speaking at political gatherings, or from making contributions to the campaign funds of the party that has nominated him and seeks his election or re-election.

29. Self-Interest.

A judge should abstain from performing or taking part in any judicial act in which his personal interests are involved. If he has personal litigation in the court of which he is judge, he need not resign his judgeship on that account, but he should, of course, refrain from any judicial act in such a controversy.

30. Candidacy for Office.**

A candidate for judicial position should not make or suffer others to make for him, promises of conduct in office which appeal to the cupidity or prejudices of the appointing or electing power; he should not announce in advance his conclusions of law on disputed issues to secure class support, and he should do nothing while a candidate to create the impression that if chosen, he will administer his office with bias, partiality or improper discrimination.

While holding a judicial position he should not become an active candidate either at a party primary or at a general election for any office other than a judicial office. If a judge should decide to become a candidate for any office not judicial, he should resign in order that it cannot be said that he is using the power or prestige of his judicial position to promote his own candidacy or the success of his party.

If a judge becomes a candidate for any judicial office, he should refrain from all conduct which might tend to arouse reasonable suspicion that he is using the power or prestige of his judicial position to promote his candidacy or the success of his party.

He should not permit others to do anything in behalf of his candidacy which would reasonably lead to such suspicion.

31. Private Law Practice.

In many states the practice of law by one holding judicial position is forbidden. In superior courts of general jurisdiction, it should never be permitted. In inferior courts in some states, it is permitted because the county or municipality is not able to pay adequate living compensation for a competent judge. In such cases one who practises law is in a position of great delicacy and must be scrupulously careful to avoid conduct in his practice whereby he utilizes or seems to utilize his judicial position to further his professional success.

He should not practise in the court in which he is a judge, even when presided over by another judge, or appear therein for himself in any controversy.

If forbidden to practise law, he should refrain from accepting any professional employment while in office.

He may properly act as arbitrator or lecture upon or instruct in law, or write upon the subject, and accept compensation therefor, if such course does not interfere with the due performance of his judicial duties, and is not forbidden by some positive provision of law.

32. Gifts and Favors.

A judge should not accept any presents or favors from litigants, or from lawyers practising before him or from others whose interests are likely to be submitted to him for judgment.

33. Social Relations.

It is not necessary to the proper performance of judicial duty that a judge should live in retirement or seclusion; it is desirable that, so far as reasonable attention to the completion of his work will permit, he continue to mingle in social intercourse and that he should not discontinue his interest in or appearance at meetings of members of the Bar. He should, however, in pending or prospective litigation before him be particularly careful to avoid such action as may reasonably tend to awaken the suspicion that his social or business relations or friendships constitute an element in influencing his judicial conduct.

34. A Summary of Judicial Obligation.

In every particular his conduct should be above reproach. He should be conscientious, studious, thorough, courteous, patient, punctual, just, impartial, fearless of public clamor, regardless of

* As amended August 31, 1933 and September 20, 1950.
** As amended August 31, 1933.

public praise, and indifferent to private political or partisan influences; he should administer justice according to law, and deal with his appointments as a public trust; he should not allow other affairs or his private interests to interfere with the prompt and proper performance of his judicial duties, nor should he administer the office for the purpose of advancing his personal ambitions or increasing his popularity.

35. Improper Publicizing of Court Proceedings.*

Proceedings in court should be conducted with fitting dignity and decorum. The taking of photographs in the court room, during sessions of the court or recesses between sessions, and the broadcasting or televising of court proceedings detract from the essential dignity of the proceedings, distract participants and witnesses in giving testimony, and create misconceptions with respect thereto in the mind of the public and should not be permitted.

* Adopted September 30, 1937 ; amended September 15, 1952 and February 5, 1963.

Provided that this restriction shall not apply to the broadcasting or televising, under the supervision of the court, of such portions of naturalization proceedings (other than the interrogation of applicants) as are designed and carried out exclusively as a ceremony for the purpose of publicly demonstrating in an impressive manner the essential dignity and the serious nature of naturalization.

36. Conduct of Court Proceedings.*

Proceedings in court should be so conducted as to reflect the importance and seriousness of the inquiry to ascertain the truth.

The oath should be administered to witnesses in a manner calculated to impress them with the importance and solemnity of their promise to adhere to the truth. Each witness should be sworn separately and impressively at the bar or the court, and the clerk should be required to make a formal record of the administration of the oath, including the name of the witness.

* Adopted September 30, 1937.

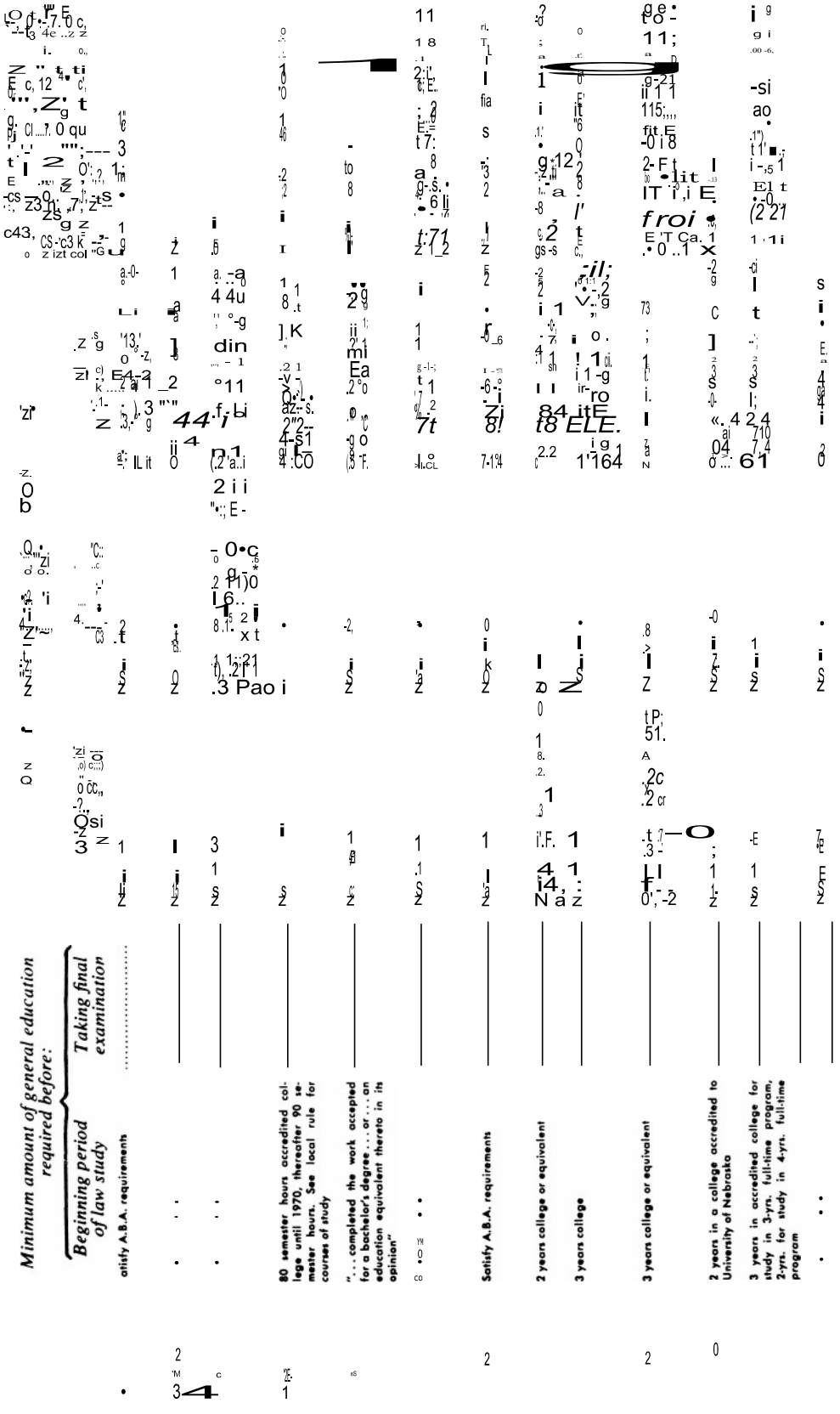
# MINIMUM REQUIREMENTS FOR ADMISSION TO LEGAL PRACTICE IN THE UNITED STATES *

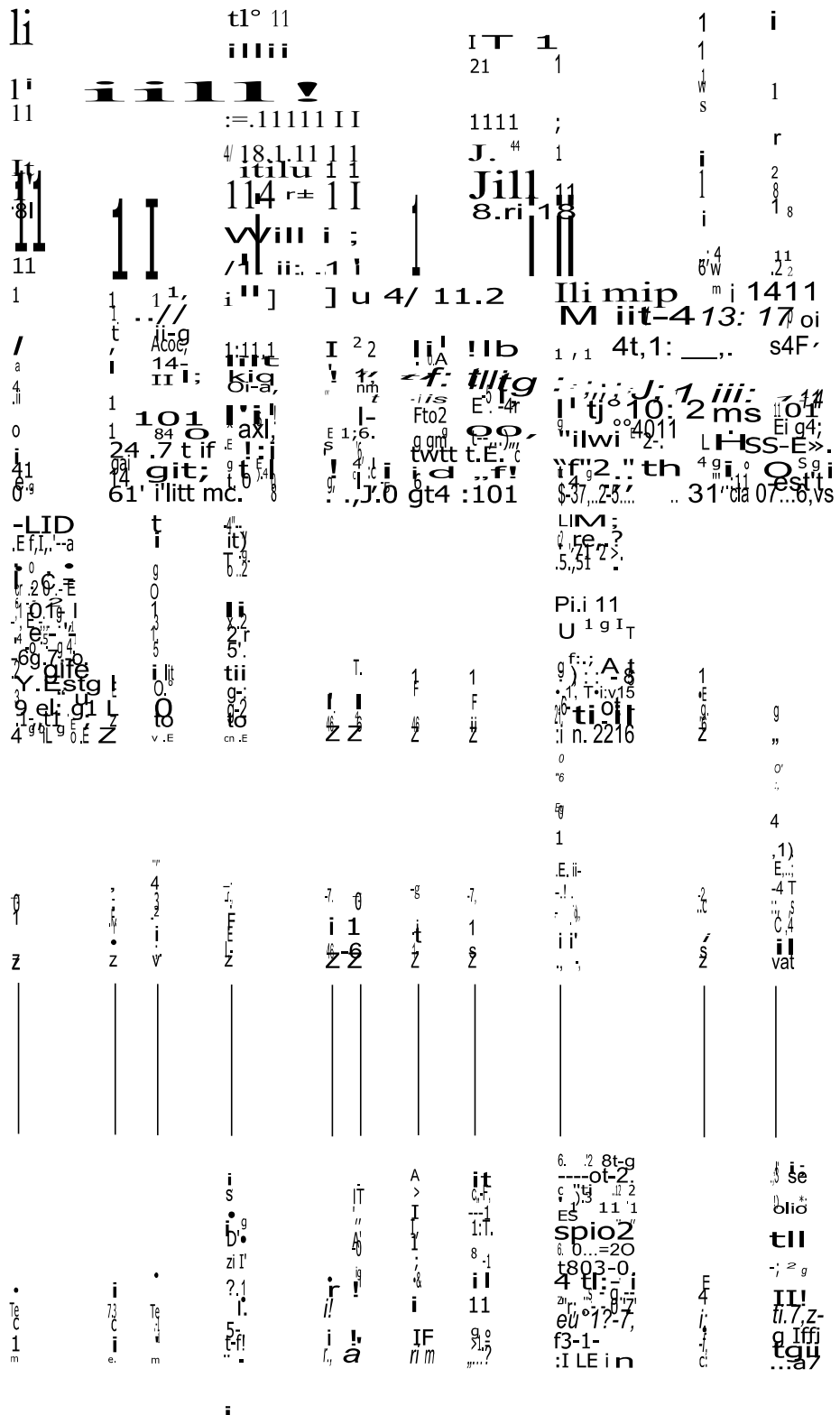
This table contains information of educational and residence requirements reported November 1, 1970. Full information and subsequent changes, if any, may be obtained by writing to the Clerk of the highest appellate Court or the Secretary of the Bar Board in each state. The compilation following does not reflect changes which may become effective on or after January 1, 1971.

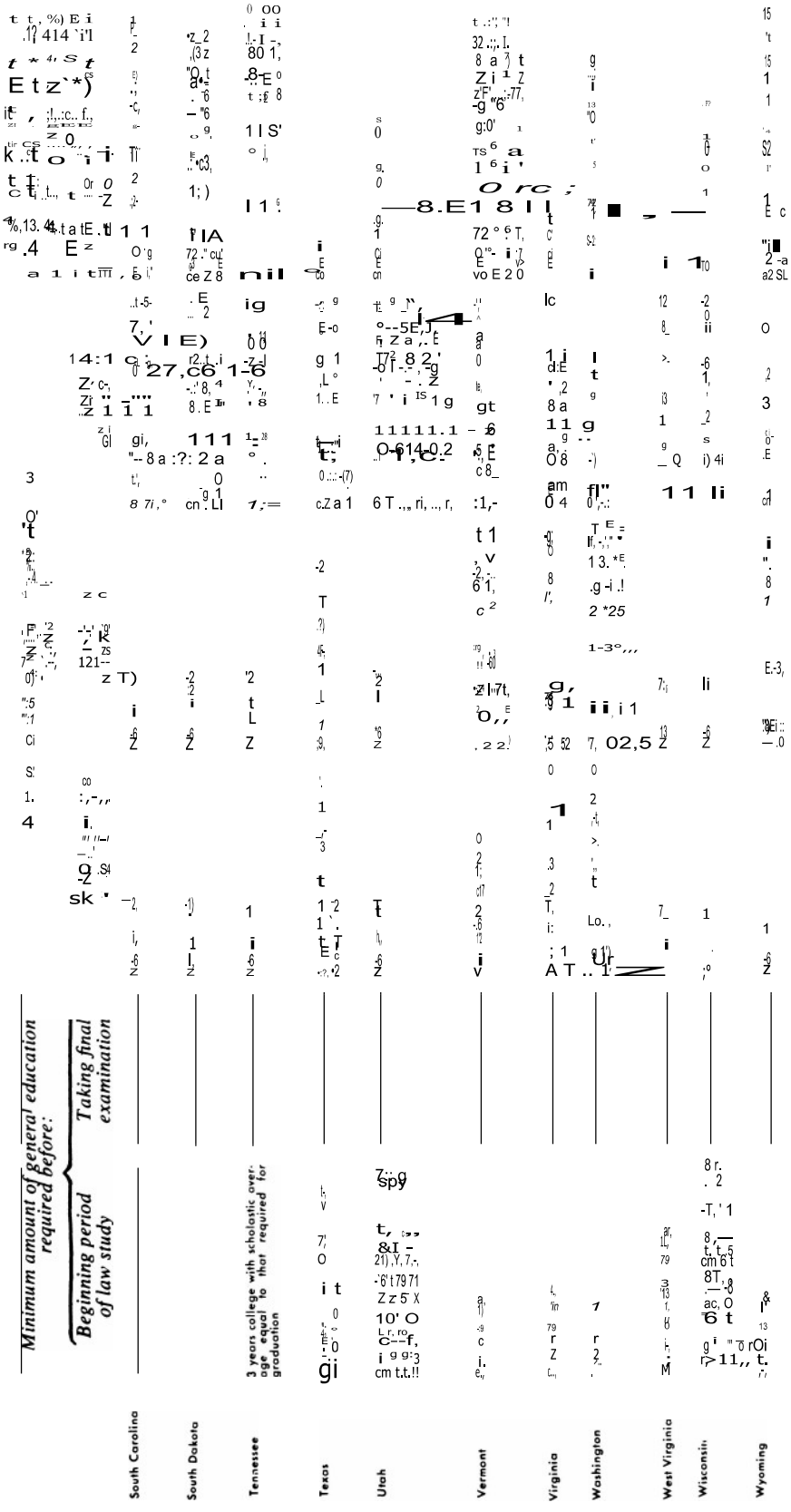
Originally published in the *Review of Legal Education,* Fall 1970 and reprinted *with the* permission of the American Bar Association and its Section of Legal Education and Admissions to the Bar.

| | Minimum amount of general education required before: | | Wholly outside a law school | | Residence Requirements (for original applicants only, does not apply to lawyers seeking admission on comity for whom separate requirements are usually laid down) |
|---|---|---|---|---|---|
| | Beginning period of law study | Taking final examination | | | |
| American Bar Association Recommendations | Three years of resident study in a college for a 3-yrs. full-time or 2-yrs. for a 4-yrs. full-time law school study | | None | At least the law school study recommended in the next column. No recommendation as to supplementary office work | Three years of full-time or "a longer course, equivalent in the number of working hours," of part-time study |
| Alabama | 3 years college | | None | | |
| Alaska | 3 years college | | None | 1 | |
| Arizona | 3 years college | | None | 1 | |
| Arkansas | 2 years college | | Not permitted | Not permitted | |
| California | 2 years approved college, or be 23 years of age and pass an educational equivalency examination or achieve admission to an accredited law school | | 4 years in California law office or California judge's chambers, or by correspondence. Must study aggregate of 3,456 hours and must take and pass first-year law students' examination at end of first year of law study | 4 years. Any combination of study mentioned in preceding column and law school study | |
| Colorado | 3 years regular college work in approved institution | | Not permitted | Not permitted | |
| Connecticut | Consult Rules | Bachelor's degree at an accredited college or university | Not permitted | Not permitted | |

| | | | | | |
|---|---|---|---|---|---|
| U.S. Court of Appeals for the District of Columbia—(circuit) | 3 years college or certified equivalent | | | | Graduation from law school approved by Court of Appeals with 3 years full-time or equivalent part-time course—not applicable to members of bar of Supreme Court of U.S. and of U.S. District Court of D.C. | None |
| | 3 years college, or its equivalent | | Not permitted | | Graduate of law school approved by A.B.A. or member of A.A.L.S. | None |
| | 2 yrs. college or equivalent as shown by examination | | Not permitted | | Not permitted | |
| | | | | | | |
| | | | Not permitted | | Not permitted | |
| | | | Not permitted | | Not permitted | |
| Indiana | | | Not permitted | | | |
| Iowa | | | | | | |
| Kansas | | | | | | |


Minimum amount of general education required before:
Taking final examination
Beginning period of law study
Satisfy A.B.A. requirements
80 semester hours accredited college until 1970, thereafter 90 semester hours. See local rule for courses of study
". . . completed the work accepted for a bachelor's degree . . . or . . . an education equivalent thereto in its opinion"
Satisfy A.B.A. requirements
2 years college or equivalent
3 years college
3 years college or equivalent
2 years in a college accredited to University of Nebraska
3 years in accredited college for study in 3-yrs. full-time program, 2-yrs. for study in 4-yrs. full-time program




Minimum amount of general education required before:
Taking final examination
Beginning period of law study
3 years college with scholastic average equal to that required for graduation
South Carolina
South Dakota
Tennessee
Texas
Utah
Vermont
Virginia
Washington
West Virginia
Wisconsin
Wyoming

# BLACK'S DICTIONARY OF LAW

## FOURTH EDITION

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**A.** The first letter in the English and most other alphabets derived from the Roman or Latin alphabet, which was one of several ancient Italian alphabets derived from the Greek, which was an adaptation of the Phoenician. The first letter in the Phoenician alphabet was called *aleph,* meaning "ox", which is also the meaning of the first letter in the Greek alphabet, *alpha.*

*Alpha* and the second letter of the Greek alphabet, *beta,* were combined to form "alphabet," which is largely the same in different languages. In Danish, Dutch, Polish and Swedish *alfabet;* in English, German and French, *alphabet;* in Italian, Portuguese and Spanish, *alfabeto;* in Russian, *alfabetli,* etc. This striking similarity shows borrowing, either mediately or immediately, from the same source.

A has several different forms, the most curious of which is little a and big A. All of our letters were first capitals, and remained so for a long time. Then small letters alone were used for centuries. Later capitals were used with small letters, largely for ornamental purposes. The ancient Egyptians had twenty a's to choose from, and it is said that a is the initial letter of about one-seventh of all Armenian words.

### Nundinal Letters

A is also the first of the nundinal letters consisting of the first eight letters of the alphabet. These letters were repeated successively from the first to the last day of the year by the Romans and every ninth day was market day, when the country people came into the city to buy and sell and to attend to their private or religious affairs. However, no market day could coincide with the first day of January or the ninth day of the other months. The first market day of the year fell eight days from the preceding market day, which made the nundinal letter change every year, but if the nundinal letter for a given year was, for example, A, the market day always coincided with A, which was the ninth day from the preceding market day, both inclusive. No judgment could be pronounced, nor assemblies of the people held, on these days, but this was changed by the *lex Hortensia* in 246 B.C. Proposed laws were posted, and a vote could not be taken until three Roman weeks *(trinum nundinum),* or 24 days, had elapsed. A judgment debtor had 30 days to satisfy judgment against him. If he failed to do so, he was seized and taken before the magistrate and if he could find no surety he was put in chains and held by the judgment creditor for 60 days, during which time the amount of his debt was proclaimed on three successive market days, and then if he failed, the XII Tables provided: *"* * * Tertiis nundinus partis secanto; si plus minusive secuerint, se fraude esto."* (On the third market day let him be cut into pieces; if any one [any creditor] cut more or less than his share, it shall not be a crime). Shylock, it will be remembered, had to cut just a pound of flesh and no more.

### Dominical or Sunday Letters

A is also the first of the Dominical or Sunday letters, consisting of the first seven letters of the alphabet, which were introduced to replace the nundinal letters of the Romans. These letters, repeated successively from the first to the last day of the year, show the order of Sundays according to the Christian calendar. If the first day of January is on Sunday, all the rest of the days designated by A will also be Sundays. Since each common year ends on the same day *of* the week that it begins, the dominical letters change each year in retrogression. If the year is a leap year an adjustment is made either on the 25th or 29th

of February. The dominical letters are used to determine the date of Easter but may also be used to determine the day of the week on which a given date falls in any year.

### A as Symbol

Both as a symbol and as an abbreviation, A is used in every phase of human activity and learning. In law, commerce, manufacturing, engineering, printing, music, medicine, geometry, mathematics, physics, chemistry, logic, philosophy, aeronautics, artillery, etc., these devices, which are meaningless to the unitiated, simply could not be dispensed with. The Puritans first burned A on the forehead of the adulterer,—or at least on that of the adulteress!—and later fastened it on the sinner's clothing. The Roman judges used three wax-covered wooden tables. On one was inscribed A for *Absolvo* (I acquit) ; on the second C for *Condemn°* (I condemn), and on the third N. L. for *Non liquet* (It is not clear). When a proposed law was to be voted on, Roman voters received two tablets, on one of which was inscribed A for *antiquo* (for the old law), and on the other U. R. for *Uti rogas* (as you ask). A is also the first of the letters employed by the Semites and the ancient Greeks as numeral signs. If the Greek a was accented above, it stood for 1; if below, it stood for 1000. The Romans also used A as a numeral sign before they adopted the letter D. If A was not accented, it stood for 500, but if accented thus, A, it stood for 5000.

The symbol is a graphic modification of the Latin *ad,* meaning "at" or "to". Some European railroads use A to designate first class railroad coaches. In European tourist guides A is used to designate places where there are hotels able to satisfy the wants of motorists. Mercantile agencies use A to indicate the highest commercial credit. A is also the highest mark given by teachers to pupils. Ship registries in United States, England, Germany and Norway use A to indicate the highest class of vessel.

In the record of American Shipping Al stands for a first-class vessel of the highest seaworthiness, the lower degrees being expressed by Al 1/2, etc., A3 being the lowest. In Lloyd's Register Al means a first-class vessel. A printed in red means an over-aged vessel. ZE a third-class vessel. The broad A means an iron ship. The description of a ship as "Al" amounts to a warranty. 011ive v. Booker, 1 Exch. 423.

In ceramics A has various meanings. On fine old Sevres A alone shows that the piece was made in 1753, whereas AA shows that it was made in 1777. A is also used as a brand by certain breeders of bulls for the bull ring, as well as by manufacturers of fine Toledo swords. A denotes the first of a series, and is used to distinguish the first page of a folio from the second, which is marked b (Coke, Litt. 114a, 114b), as well as the first foot-note and the first section or subsection in statutes. It is also the name of the sixth note of the natural diatonic scale of C, or the first note of the relative minor scale. To this note all orchestral instruments are tuned. A also indicates the key in which many great pieces of music are composed. The money coined at the Paris mint is marked with an A, and it was long supposed that such coinage was superior to that of the provincial mints. This gave rise to the phrase *Etre marque a l'A* (to be marked with an A) and was used to indicate a man of eminent rank or merit, just as we use A-1 or A to indicate excellence of either persons or commodities.

A is also used in numerous other phrases and proverbs. For example, *A word to the wise is sufficient.* This ordinarily admonitory proverb was held to be libellous in view of the context in which it was used. One who had sold out to his partner warned customers that the buyer was not responsible for his debts, since he was a minor, and that "a word to the wise is sufficient." The court said: "But when what was previously said is followed by the significant and proverbially pre. cautionary words—`A word to the wise is sufficient,' the idea is at once conveyed that plaintiff, is wanting in honor and integrity as a business man, and that those who should deal with him would suffer loss." Hays v. Mather, 15 Ill.App. 30, 34. For the phrase, *from alpha to omega,* there is our *from A to Z* and *A to izzard,* and the German von *A bis Z,* which mean from beginning to end; completely; thoroughly; or in more modern slang, from soup to nuts. The German proverb *Wer A sagt, mus auch B sagen* is based on a profound knowledge of human nature, and translates, you can't say A without saying B; in for a penny, in for a pound. In other words, don't take the *first* step if you don't want to go the limit. Of a very ignorant or stupid person it has long been said that *He does not know great A from a bull's foot* or that he knows ni *A ni B* (neither A nor B). In *Birds of a feather flock together, a* means the same, or a *feather* means the same kind.

### A as Abbreviation

As an abbreviation a, either alone or in combination with other letters, is used in all the arts and sciences as well in hundreds of non-technical ways. Its meaning as an abbreviation largely depends on context. In common usage, it may mean *about, accepted, acne, aged, answer, ante, area, amateur,* etc. It is also used for almost any name of a person beginning with A, as Alfred, Anna, etc. In chemistry it stands for argon. A note provided for "Int. @ p. a." The court said: "The letter when used in a note, as it is here, is known and recognized among commercial people and businessmen as standing for 'at.'" Belford v. Beatty, 34 N.E. 254, 255, 145 Ill. 414, 418.

A is an abbreviation of *adversus* (against). *Versus* and its abbreviation v. are much oftener used in this sense, though the original Latin meaning of *versus* is toward; in the direction of.

A, angstrom unit; the unit for measuring the length of light waves.. The ultra violet rays of sunlight between 3130A and 2900A activate pro-

vitamins in the skin and certain foods, so as to produce the antirachitic substance known as vitamin D, which is also extracted from fish liver oils.

### The Spelling of A

A was formerly spelt a-per-se, a ("a" by itself makes the word "a") of which A-per-se-A, A persey, and apersie were corruptions and synonymous with superior, chief, first, etc.

### A in Latin and Law Latin

Anglo-American law abounds in Latin and French words and phrases, and the use of A in these languages is important to the English-speaking lawyer. In Latin "A" was used both as an abbreviation and as a symbol. For example "A" was an abbreviation for "Aulus,". a praenomen, or the first of the usual three names of a person by which he was distinguished from others of the same family; also for "ante" in "a. d.," *ante diem* (before the day), and for "anno" (year) in a. u. c., anno *urbis conditae* (the year of the building of the city) and in *anno ab urbe condita* (from the year of the building of the city). As a preposition, the form was either A, AB or ABS. A was used before consonants; ab was usually used before vowels, but sometimes before consonants, whereas abs was used before "c" or "t." The meaning was "from," "away from," "on the side of," "at," "after," "since," "by," "by means of," "out of," "with reference to," "in regard of," "near by," and "along." For example, *A fronte* in front; ab *tergo,* from behind; a *puertitia,* from youth; *ab sole orbe,* from or at sunrise; *ab intestato,* without a will, intestate. In law Latin, "a" means "by," "with," "from," "in," "of," and "on," and AB means "by," "from," and "in". 1 C.J.S. p. 2.

### A in French and Law French

In French A is a preposition, the meaning of which largely depends on context. It is usually translated as "into," "at," "to," "in," "by," "of," "with," "on," "from," "for," "under," "till," "within," "between," etc. It also changes into au and *aux* when combined with "the." A is also the third person, singular number, present tense, indicative mood of the verb avoir, (to have) : Il *a* (he has). In law French "a" is used as a preposition meaning "at," "for," "in," "of," "on," "to," and "with." 1 C.J.S. p. 2.

### A in Roman Criminal Law

Among the Romans this letter was used in criminal trials. The judges were furnished with small tables covered with wax, and each one inscribed on it the initial letter of his vote: A (absolvo) when he voted to acquit the accused; C (condemno) when he was for condemnation; and N L (non liquet), when the matter did not appear clearly, and he desired a new argument.

The letter A (i. e. antiquo, "for the old law") was inscribed upon Roman ballots under the Lex Tabellaria, to indicate a negative vote; Tayl.Civ. Law, 191, 192.

### A as Indefinite Article

A is the form of the indefinite article that is used before consonants and initial consonant sounds, on being used before initial vowel sounds, as, for example, a *house,* a *year,* a *utility;* but an oak, an *ape* and an *hour,* because the h is silent. .Formerly where the initial h of certain words was not accented, as historical, hypothetical, hotel, humble, etc., an was used, but now the h is no longer silent, and the best usage in both the United States and England is to use a before such words. *A hypothetical question,* a *historical monument, a hotel,* etc., are the correct forms.

The word "a" has varying meanings and uses. "A" means "one" or "any," but less emphatically than either. It may mean one where only one is intended, or it may mean any one of a great number. It is placed before nouns of the singular number, denoting an individual object or quality individualized. First Trust Joint Stock Land Bank of Chicago v. Armstrong, 222 Iowa 425, 269 N.W. 502, 506, 107 L.R.A. 873.

The article "a" is not necessarily a singular term; it is often used in the sense of "any" and is then applied to more than one individual object. Philadelphia & R. R. Co. v. Green & Flinn, 2 W.W. Harr. (Del.) 78, 119 A. 840, 846; In re Sanders, 54 Law J.Q.B. The article "a" is not generally used in a singular sense unless such an intention is clear from the language of the statute, 1 C.J.S., A, p. 1, but statute providing that parties to "a" reorganization shall be deemed a single employing unit referred to quality or nature of changes, rather than quantity, and meant not one or only one, but any, and fact that there had been more than one reorganization did not prevent statute from applying. Lindley v. Murphy, 387 Ill. 506, 56 N.E.2d 832, 838. So under a statute providing that the issuance of "a" certificate to one carrier should not bar a certificate to another over the same route, a certificate could be granted to more than two carriers over the same route. State ex rel. Crown Coach Co. v. Public Service Commission, 238 Mo.App. 287, 179 S.W.2d 123, 127. But the meaning depends on context. For example, in Workmen's Compensation Act, on, or in or about "a" railway, factory, etc., was held not to mean any railway, factory, etc., but *the* railway, factory, etc., of the employer. Francis v. Turier, [1900] 1 Q.B. 478; 69 L.J.Q.B. 182; 81 L.T. 770; 48 W.R. 228; 64 J.P. 53.

Insurance against loss occasioned by "a sea" did not limit insured to loss occasioned by a single wave, but covered losses occasioned by heavy waves during voyage. Snowden v. Guion, 101 N. Y. 458, 5 N.E. 322.

In State ex rel. Atty. Gen. v. Martin, 60 Ark. 343, 30 S. W. 421, 28 L.R.A. 153, the state Constitution provided for "a judge" in each circuit. Owing to increase in judicial business, the Legislature provided for an additional judge for the sixth circuit. It was contended that the statute was unconstitutional. The court said:

"Now, the adjective 'a,' commonly called the 'indefinite article,' and so called, too, because it does not define any particular person or thing, is entirely too indefinite, in the connection used, to define or limit the number of

judges which the legislative wisdom may provide for the judicial circuits of the state. And it is perfectly obvious that its office and meaning was well understood by the framers of our constitution, for nowhere in that instrument do we find it used as a numerical limitation. It is insisted that if 'a' does not mean 'one,' and 'but one,' in the section quoted, then the way is open for a latitudinarian construction in the various other sections where it occurs.

" * • * So the question recurs as to the significance of the letter 'a,' for the convention must be taken to have meant what they have plainly said. It performs precisely the same office here as in every other section where it occurs. Section 6 of the article 7 says, 'A judge of the supreme court shall be learned in the law,' etc. ; section 16 says, 'A circuit judge shall be learned in the law,' etc. ; section 41, 'A justice of the peace shall be a qualified elector and a resident of the township,' etc. Does the word 'a' in these sections mean one, and only one, judge or justice? If so, which one ? *In* the same section in which 'a judge' occurs we find. `He shall be "a" conservator of the peace within the circuit.' Does 'a conservator' mean that he is to be the only conservator of the peace for the circuit? If so, this provision is plainly in conflict with others. See sections 4, 40. It is apparent that 'a' was used before the word 'judge' in the section under consideration because, according to our English idiom, the sentence could not have been euphoniously expressed without it. In some languages—the Latin and Russian, for instance—it would not have been used at all. It could have been omitted without in the least impairing the sense, and its use gave no additional force or meaning to the sentence. To use the illustration of the learned counsel for the state: If one orders 'a sack of flour, a ham, a horse, a ton of coal,' etc., it is understood he means but one. So it would be understood if he left off the 'a,' and said 'sack of flour, ham, horse, ton of coal,' the 'a' being used before the words beginning with the consonant sound simply to preserve the euphony. If the limitation is not in the word 'judge' without the 'a,' there is certainly no restriction with it. According to Mr. Webster, 'a' means 'one' or 'any,' but less 'emphatically than either.' It may mean one where only one is intended, or it may be any one of a great number. That is the trouble. Of itself, it is in no sense a term of limitation. If there were a dozen judges in any one circuit each would still be 'a judge' for that circuit. Mr. Webster also says, 'It is placed before nouns of the singular number, denoting an individual object, or quality individualized.' 'Quality' is defined as (1) 'the condition of being of such a sort as distinguished from others; (2) special or temporary character; profession, occupation.' Webst. Dict. The 'a' was so used here. The character, or profession, individualized, was that of a judge. The functions of the office to be performed were those of 'a judge,' not governor, sheriff, or constable. A review of the various other provisions of the constitution, supra, where the word 'a' occurs, shows that no absurd consequences, such as filling the offices in other departments with a multitudinous array of incumbents, could possibly result."

Where the law required the delivery of a copy of a notice to husband and a copy to wife, the sheriff's return that he had delivered "a copy" to husband and wife was insufficient. State v. Davis, Tex.Civ.App., 139 S.W.2d 638, 640.

In Lakeside Forge Co. v. Freedom Oil Works, 265 Pa. 528, 109 A. 216, 217, it was said :

" 'A car or two' signifies an indefinite small number, and may include as many as seven. In that respect the expression is similar to 'a few.' It must be construed with reference to the subject matter, and is not necessarily confined to one or two. It is like the words 'in a day or two.' "

In Deutsch v. Mortgage Securities Co., 96 W.Va. 676, 123 S.E. 793, the deed contained a covenant against construction of flats or apartments and provided that no dwelling but "a one-family house" should be built on the lot. The grantee built two one-family dwelling houses; and it was held that he could properly do so.

"A" is sometimes read as "the." Bookham v. Potter, 37 L.J.C.P. 276; L.R. 3 C.P. 490; 16 W.R. 806; 18 L.T. 479, though the two terms are ordinarily distinguishable. Howell v. State, 138 S.E. 206, 164 Ga. 204. The grant of "a" right of sporting on land, gives only a concurrent right, but the grant of "the" right gives it exclusively. Sutherland v. Heathcote, [1892] 1 Ch. 475; 61 L.J. 248; 66 L.T. 210. And a license to fish with "a" rod and line does not justify the use of more than one rod and one line. Combridge v. Harrison, 72 L.T. 592; 64 L.J.M.C. 175; 59 J.P. 198.

Hinson v. Hinson, 176 N.C. 613, 97 S.E. 465, involved a will providing that son taking care of widow should receive $100 "a year." It was held that the quoted words were not synonymous with annually, but merely fixed the rate of compensation, and that there was no right to compensation until widow's death.

AAA. Agricultural Adjustment Act.

A. A. C. *Anno ante Christum,* the year before Christ.

A. A. C. N. *Anno ante Christum natum,* the year before the birth of Christ.

A AVER ET TENER. L. Fr. (L. Lat. *habendum et tenendum.)* To have and to hold. Co.Litt. §§ 523, 524. *A aver et tener a luy et a ses heires, a touts fours,—to* have and to hold to *him* and his heirs forever. Id. § 625. See Aver et Tener.

A. B. Able-bodied seaman. In English law a seaman is entitled to be rated A. B. when he has served at sea three years before the mast. In the United States the term "Able Seaman" is used. For the requirements of able seaman, see 46 U.S. C.A. § 672. Also *artium baccalaureus,* bachelor of arts. In England, generally written B. A.

A. B. A. American Bar Association.

A. B. A. J. American Bar Association Journal.

A BON DROIT. With good reason; justly; rightfully.

A. C., *Anno Christi,* the year of Christ.

A/C means account and is much used by bookkeepers. As used in a check, it has been held not a direction to the bank to credit the amount of the check to the person named, but rather a memorandum to identify the transaction in which the check was issued. Marsh v. First State Bank & Trust Co. of Canton, 185 29, 32.

A CANCELLANDO. From cancelling. 3 Bl. Comm. 46.

A CANCELLIS, The Chancellor.

A CANCELLIS CURIAE EXPLODI. To be expelled from the bar of the court.

A CAPELLA OR A LA CAPELLA. In music, in the church style; also that the instruments are to play in unison with the vocal part, or that one part is to be played by a number of instruments.

A CAUSA DE CY. For this reason.

A. C. C. Agricultural Credit Corporation.

A CE. For this purpose.

A CEL JOUR. At this day.

A CELO USQUE AD CENTRUM. From the heavens to the center of the earth. Or more fully, *Cujus est solum ejus est usque ad coelum et ad inferos.* The owner of the soil owns to the heavens and also to the lowest depths. Or, *Cujus est solum est usque ad* cceium,—the owner of the soil owns to the heavens. This doctrine has been questioned. Butler v. Frontier Telephone Co., 186 N.Y. 486, 79 N.E. 716, 11 L.R.A.,N.S., 920—and the flight of airplanes and recent oil and gas regulations undoubtedly have qualified the owner's dominion not only in the heavens but in the lowest depths. See American Digest System, Mines and Minerals, C=92, and Trespass, 010.

A COMMUNI OBSERVANTIA NON EST RECEDENDUM. From common observance there should be no departure; there must be no departure from common usage. 2 Coke, 74; Co. Litt. 186a, 229b, 365a; Wing.Max. 752, max. 203. A maxim applied to the practice of the courts, to the ancient and established forms of pleading and conveyancing, and to professional usage generally. Id. 752-755. Lord Coke applies it to common professional opinion. Co.Litt. 186a, 364b.

A CONFECTIONE. From the making. Clayton's Case, 5 Coke, pt. II, la; Anonymous, 1 Ld. Raym. 480.

A CONFECTIONE PRAESENTIUM. From the making of the indentures. Clayton's Case, 5 Coke, pt. II, la.

A CONSILIIS. (Lat. *consilium,* advice.) Of counsel; a counsellor. The term is used in the civil law by some writers instead of a *responsis.* Spelman, *"Apocrisarius."*

A CONTRARIO SENSU. On the other hand; in the opposite sense.

A CUEILLETTE. In French law. In relation to the contract of affreightment, signifies when the cargo is taken on condition that the master succeeds in completing his cargo from other sources. Arg.Fr.Merc.Law, 543.

A. D. *Anno Domini,* in the year of our Lord.

An information charging that act was committed on 4th day of August, "A. D. 190 ," alleged an impossible year "and it is quite evident that the last figure of the year was inadvertently omitted but what that figure was intended to be * * * cannot be inferred with any certainty." People v. Weiss, 168 Ill.App. 502, 504.

"The information alleges that the offense therein sought to be charged was committed 'on the 30th day of April, A. D. 19 .' There is no other allegation of time in the information, and it Is in effect and for all practical purposes wholly wanting in any allegation as to time. The time alleged is impossible and in that respect the information is absurd. The objection is not merely technical, as that term is commonly used, but is substantial and fatal." People v. Wagner, 172 Ill.App. 84,

A DATO. From the date. Cro.jac. 135. See *A Datu.*

A DATU. Law Latin. From the date. Anonymous, 1 Ld.Raym. 480; Haths v. Ash, 2 Salk. 413. See *A Dato.*

A DIE CONFECTIONIS. From the day of the making. Barwick's Case, 5 Coke 93b.

A DIE DATUS. From the day of the date. Hatter v. Ash, 1 Ld.Raym. 84; Anonymous, 1 Ld. Raym. 480; Seignorett v. Noguire, 2 Ld.Raym. 1241. Used in leases to determine the time or running of the estate, and when so used includes the day of the date. Doe v. Watkins, 1 Cowp. 189, 191. But *contra,* see Haths v. Ash, 2 Salk. 413.

A DIGNIORI FIERI DEBET DENOMINATIO. Denomination ought to be from the more worthy. The description (of a place) should be taken from the more worthy subject (as from a will). Fleta, lib. 4, c. 10, § 12.

A DIGNIORI FIERI DEBET DENOMINATIO ET RESOLUTIO. The title and exposition of a thing ought to be derived from, or given, or made with reference to, the more worthy degree, quality, or species of it. Wing.Max. 265, max. 75.

A. E. C. Atomic Energy Commission.

A FINE FORCE. Of pure necessity.

A FORCE. Of necessity.

A FORCE ET ARMIS. With force and arms.

A FORFAIT ET SANS GARANTIE. In French law. A formula used in indorsing commercial paper, and equivalent to "without recourse."

A FORTIORI. With stronger reason; much more. A term used in logic to denote an argument to the effect that because one ascertained fact exists, therefore another, which is included in it, or analogous to it, and which is less improbable, unusual, or surprising, must also exist.

A GRATIA. By grace; not of right.

A. H., *Anno Hegirae* (in the year of the hegira).

A ISSUE. At issue.

A JURE SUO CADUNT. They (for example, persons abandoning chattels) lose their right.

A JUSTITIA (QUASI A QUODAM FONTE) OMNIA JURA EMANANT. From justice, as a fountain, all rights flow. Brae. 2 b.

A LA GRANDE GREVAUNCE. To the great grievance.

A LARGE. Free; at large.

A LATERE. Lat. Collateral. Used in this sense in speaking of the succession to property. Bract. 20b, 62b. From, on, or at the side; collaterally. *A latere ascendit (jus).* The right ascends collaterally. Justices of the *Curia Regis* are described as a *latere regis residentes,* sitting at the side of the King; Bract. fol. 108a; 2 Reeve, Hist. Eng.L. 250.

In Civil Law and by Bracton, a synonym for e transverso, across. Bract. fol. 67a.

Applied also to a process or proceeding. Keilw. 159. Out of the regular or lawful course; incidentally or casually. Bract. fol. 42b; Fleta, lib. 3, c. 15, § 13.

From the side of; denoting closeness of intimacy or connection; as a court held before auditors *specialiter a latere regis destinatis.* Fleta, lib. 2, c. 2, § 4.

Apostolic; having full powers to represent the Pope as if he were present. Du Cange, *Legati, a latere;* 4 Bla.Com. 306.

A LIBELLIS. L. Lat. An officer who had charge of the *libelli* or petitions addressed to the sovereign. Calvin. A name sometimes given to a chancellor, *(cancellarius,)* in the early history of that office. Spelman, *"Cancellarius."*

A L'IMPOSSIBLE NUL N'EST TENU. No one is bound to do the impossible.

A LOUR FOY. In their allegiance.

A LUY ET A SES HEIRES A TOUTS JOURS. To him and to his heirs forever.

A. *M. Ante meridiem,* before noon. Only the abbreviation is ordinarily used. Orvik v. Casselman, 105 N.W. 1105, 15 N.D. 34. Also *artium magister,* master of arts. Also *annus mirabilis,* the wonderful year-1666, the year of the defeat of the Dutch fleet and of the great London fire. Also anno *mundi,* in the year of the world; that is, when the creation of the world is said to have taken place, 4004 B. C.

A. M. A. Agricultural Marketing Act.

A MA INTENT. On my action. Mitchell v. Reynolds, 1 Smith Lead.Cas. (7th Am. ed.) 516.

A MANIBUS. Lat. Royal scribe. Amanuensis.

A MANU SERVUS. Lat. A handservant; a scribe; a secretary.

A ME. (Lat. *ego,* I.) A term in feudal grants denoting direct tenure of the superior lord. 2 Bell, H.L.Sc. 133.

Unjustly detaining from me. He is said to withhold a *me* (from me) who has obtained possession of my property unjustly. Calvinus, Lex. To pay a *me,* is to pay from my money.

A MENSA ET THORO. Lat. From table and bed, but more commonly translated, from bed and board. A kind of divorce, which is rather a separation of the parties by law, than a dissolution of the marriage. 27 C.J.S., Divorce, § 160.

A MULTO FORTIORI. By far the stronger reason.

A NATIVITATE. From birth, or from infancy. Denotes that a disability, status, etc., is congenital 3 Bla.Comm. 332; Reg.Orig. 266b.

A NON POSSE AD NON ESSE SEQUITUR ARGUMENTUM NECESSARIE NEGATIVE, LICET NON AFFIRMATIVE. A literal translation—From impossibility to non-existence the inference follows necessarily in the negative, though not in the affirmative—is as ambiguous as the original. It could be translated thus: The negative inference of non-existence necessarily follows from impossibility of existence, but the affirmative inference of existence cannot be drawn from mere possibility.

A. 0. C. *Anno orbis conditi,* the year of the creation of the world.

A OUTRANCE. To the bitter end; to excess; to the utmost extent. Frequently incorrectly written by persons with only a smattering of French a l'outrance.

A PAIS. To the country; at issue.

A PALATIO. L. Lat. From *Palatium,* (a palace.) Counties palatine are hence so called. 1 Bl.Comm. 117. See Palatium.

A. P. C. Alien Property Custodian.

A. P. C. N. *Anno post Christum natum,* the year after the birth of Christ.

A PIRATIS AUT LATRONIBUS CAPTI LIBERI PERMANENT. Persons taken by pirates or robbers remain free. Dig. 49, 15, 19, 2; Gro. de J. B. lib. 3, c. 3, § 1.

A PIRATIS ET LATRONIBUS CAPTA DOMINUM NON MUTANT. Capture by pirates and robbers does not change title. Bynk. bk. 1, c. 17; 1 Kent, Comm. 108, 184. No right to booty vests in piratical captors; no right can be derived from them by recaptors to the prejudice of the original owners. 2 Wood.Lect. 428.

A POSTERIORI. Lat. From the effect to the cause; from what comes after. A term used in logic to denote an argument founded on experiment or observation, or one which, taking ascertained facts as an effect, proceeds by synthesis and induction to demonstrate their cause.

A. P. R. C. *Anno post Roman conditam,* year after the foundation of Rome.

A PRENDRE. L. Fr. To take; to seize. *Bret a prendre la terre,* a writ to take the land. Fet Ass. § 51. A right to take something out of the soil of another is a profit a *prendre,* or a right coupled with a profit. 1 Crabb, Real Prop. p. 125, § 115. Distinguished from an easement. 5 Adol. & E. 758. Sometimes written as one word, *apprendre, apprender.* See Profit a prendre.

Rightfully taken from the soil. 1 N. & P. 172; Waters v. Lilley, 4 Pick. (Mass.) 145, 16 Am.Dec. 333.

A PRIORI. Lat. From the cause to the effect; from what goes before. A term used in logic to

denote an argument founded on analogy, or abstract considerations, or one which, positing a general principle or admitted truth as a cause, proceeds to deduce from it the effects which must necessarily follow.

A PROVISIONE VIRI. By the provision of man. 4 Kent, Comm. 55.

A QUO. Lat. From which. A court a *quo* (also written "a qua") is a court from which a cause has been removed. The judge a quo is the judge in such court. Clegg v. Alexander, 6 La. 339.

A term used, with the correlative *ad quem* (to which), in expressing the computation of time, and also of distance in space. Thus, *dies a quo,* the day from which and *dies ad quem,* the day to which, a period of time is computed. So, *terminus a quo,* the point or limit from which, and *terminus ad quem,* the point or limit to which, a distance or passage in space is reckoned.

A QUO INVITO ALIQUID EXIGI POTEST. From whom something may be exacted against his will.

A. R. Anno *Regni.* In the year of the reign; as A. R. V. R. 22, *(Anno Regni Victoriae Reginae vicesimo secundo)* in the twenty-second year of the reign of Queen Victoria.

A REMENAUNT. Forever.

A RENDRE. (Fr. to render, to yield.) That which is to be rendered, yielded, or paid. *Profits a rendre* comprehend rents and services. Ham. N.P. 192.

A RESCRIPTIS VALET ARGUMENTUM. An argument from rescripts *[i. e.* original writs in the register] is valid. Co.Litt. 11 a.

A RESPONSIS. L. Lat. In ecclesiastical law. One whose office it was to give or convey answers; otherwise termed *responsalis,* and *apocrisiarius.* One who, being consulted on ecclesiastical matters, gave answers, counsel, or advice; otherwise termed a *consiliis.* Spelman, *"Apocrisiarius."*

A RETRO. L. Lat. Behind; in arrear. *Et reditus proveniens rode a retro fuerit,* and the rent issuing therefrom be in arrear. Fleta, lib. 2, c. 55, § 2; c. 62, § 14.

A RUBRO AD NIGRUM. Lat. From the red to the black; from the rubric or title of a statute (which, anciently, was in *red* letters), to its body, which was in the ordinary *black.* Tray.Lat.Max.; Bell, *"Rubric;"* Erskine, Inst. 1, 1, 49.

A SAVOIR. To wit.

A SUMMO REMEDIO AD INFERIOREM ACTIONEM NON HABETUR REGRESSUS, NEQUE AUXILIUM. From (after using) the highest remedy, there can be no recourse (going back) to an inferior action, nor assistance, (derived from it.) Fleta, lib. 6, c. 1, § 2. A maxim in the old law of real actions, when there were grades in the remedies given; the rule being that a party who brought a writ of right, which was the highest writ in the law, could not afterwards resort or descend to an inferior remedy. Bract. 112b; 3 Bl.Comm. 193, 194.

A TEMPORE CUJUS CONTRARII MEMORIA NON EXISTET. From a time of which there is no memory to the contrary.

A TENERIS ANNIS. By reason of youth.

A TERME. For a or the term.

A TERME DE SA VIE. For the term of his life. U.B. 3 Edw. II, 55.

A TERME QUE N'EST MYE ENCORE PASSE. For a term that has not yet passed.

A TERME QUE PASSE EST. For a term that has passed.

A TORT. Without reason; unjustly; wrongfully.

A TORT ET A TRAVERS. Without consideration or discernment.

A TORT OU A DROIT. Right or wrong.

A VERBIS LEGIS NON EST RECENDENDUM. The words of a statute must not be departed from. 5 Coke 119; Wing.Max. 25. A court is not at liberty to disregard the letter of a statute, in favor of a supposed intention. 1 Steph.Comm. 71; Broom, Max. 268.

A VINCULO MATRIMONII. Lat. From the bond of matrimony. A term descriptive of a kind of divorce, which effects a complete dissolution of the marriage contract. See Divorce.

A B (fr. *Abba,* Syr., Father). The eleventh month of the Jewish civil year, and the fifth of the sacred year. It answers to the moon that begins in July, and consists of thirty days. On the 24th is observed a feast in memory of the abolishment of the Sadducean law, which required sons and daughters to be equal heirs and heiresses of their parents' estates. Brown's Diet. of Bible, John's Bib.Antiq. AB, at the beginning of English-Saxon names of places, is generally a contraction of abbot or abbey; whence it is inferred that those places once had an abbey there, or belonged to one elsewhere, as Abingdon in Berkshire. Blount's Law Gloss. Wharton's Law Lexicon.

AB. ABR. Abridgment.

AB ABUSU AD USUM NON VALET CONSEQUENTIA. A conclusion s to the use of a thing from its abuse is invalid. Broom, Max. 17.

AB ACTIS. Lat. An officer having charge of *acta,* public records, registers, journals, or minutes; an officer who entered on record the *acta* or proceedings of a court; a clerk of court; a

notary or actuary. Calvin.Lex.Jurid. See *"Acta."* This, and the similarly formed epithets a *cancellis,* a *secretis,* a *libellis,* were also anciently the titles of a chancellor, *(cancellarius,)* in the early history of that office. Spelman, *"Cancellarius."*

AB AGENDO. Disabled from acting; unable to act; incapacitated for business or transactions of any kind.

AB ANTE. Lat. Before; in advance. Thus, a legislature cannot agree ab *ante* to any modification or amendment to a law which a third person may make. Allen v. McKean, 1 Sumn. 308, Fed. Cas.No.229 (college charter).

AB ANTECEDENTE. Lat. Beforehand; in advance. 5 M. & S. 110.

AB ANTIQUO. From old times; from ancient time; of old; of an ancient date. 3 Bl.Comm. 95.

AB ASSUETIS NON FIT INJURIA. From things to which one is accustomed (or in which there has been long acquiescence) no legal injury or wrong arises. If a person neglect to insist on his right, he is deemed to have abandoned it. Amb. 645; 3 Brown, Ch. 639; Jenk.Cent.Introd. vi.

AB EPISTOLIS. Lat. An officer having charge of the correspondence *(epistolce)* of his superior or sovereign; a secretary. Calvin.; Spiegelius.

AB EXTRA. (Lat. *extra,* beyond, without.) From without. Lunt v. Holland, 14 Mass. 151.

AB INCONVENIENT!. From hardship, or inconvenience. An argument founded upon the hardship of the case, and the inconvenience or disastrous consequences to which a different course of reasoning would lead. Barber Asphalt Paving Co. v. Hayward, 248 Mo. 280, 154 S.W. 140.

AB INITIO. Lat. From the beginning; from the first act; entirely; as to all the acts done; in the inception. A party may be said to be a trespasser, an estate to be good, an agreement or deed to be void, or a marriage or act to be unlawful, ab *initio.* Plow. 6a, 16a; 1 Bl.Comm. 440; Hopkins v. Hopkins, 10 Johns. (N.Y.) 369.

Before. Contrasted in this sense with *ex post facto,* 2 Shars.Bla.Comm. 308; or with *postea,* Calvinus, Lex., *initium.*

Validity of insurance policy ab initio, In re Millers' & Manufacturers' Ins. Co., 97 Minn. 98, 106 N.W. 485; Unconstitutional statute as not void ab initio, State v. Poulin, 105 Me. 224, 74 A. 119, 24 L.R.A.,N.S., 408; physical incapacity, marriage not void ab initio, Bennett v. Bennett, 169 Ala. 618, 53 So. 986, L.R.A.1916C, 693.

AB INITIO MUNDI. Lat. From the beginning of the world. *Ab initio mundi usque ad hodiernum diem,* from the beginning of the world to this day. Y.B.M. 1 Edw. III, 24.

AB INTESTAT. Intestate. 2 Low.Can. 219. Merlin, Repert.

AB INTESTATO. - Lat. In the civil law. From an intestate; from the intestate; in case of intestacy. *Hcereditas* ab *intestato,* an inheritance derived from an intestate. Inst. 2, 9, 6. *Successio ab intestato,* succession to an intestate, or in case of intestacy. Id. 3, 2, 3; Dig. 38, 6, 1. This answers to the descent or inheritance of real estate at common law. 2 Bl.Comm. 490, 516; Story, Confl.Laws, § 480. "Heir ab *intestato."* 1 Burr. 420. The phrase "ab *intestato"* is generally used as the opposite or alternative of *ex testamento,* (from, by, or under a will.) *Vel ex testamento, vel ab intestato [hcereditates] pertinent,—inheritances* are derived either from a will or from an intestate, (one who dies without a will.) Inst. 2, 9, 6; Dig. 29, 4; Cod. 6, 14, 2.

AB INVITO. Unwillingly. Against one's will. By or from an unwilling party. A transfer ab invito is a compulsory transfer. See in invitum and invito.

AB JUDICATIO. A removal from court.

AB IRATO. Lat. By one who is angry. A devise or gift made by a man adversely to the interest of his heirs, on account of anger or hatred against them, is said to be made *ab irato.* A suit to set aside such a will is called an action ab *irato.* Merlin, Repert. *Ab irato.* Snell v. Weldon, 239 Ill. 279, 87 N.E. 1022.

AB OLIM. Of old.

AB OVO. The egg, hence from the beginning in allusion to old Roman custom of beginning a meal with eggs and ending with fruit, *ab ovo usque ad mala.* To begin with eggs and end with fruit. Also, at times in allusion to poets who began history of Trojan war with the egg from which Helen was said to have been hatched in contrast with Homer who plunged into the midst of things, or *in media res.*

AB 1URBE CONDITA. See A.U.C.

ABACIST or ABACISTA. A caster of accounts, an arithmetician.

ABACTION. A carrying away by violence.

ABACTOR. A stealer and driver away of cattle or beasts by herds or in great numbers at once, as distinguished from a person who steals a single animal or beast. Also called *abigeus,* q. v.

ABADENGO. In Spanish law. Land owned by an ecclesiastical corporation, and therefore exempt from taxation. In particular, lands or towns under the dominion and jurisdiction of an abbot. Escriche, Dicc. Raz.

ABALIENATE. To transfer interest or title.

ABALIENATIO. In Roman law. The perfect conveyance or transfer of property from one Roman citizen to another. This term gave place to the simple *alienatio,* which is used in the Digest and Institutes, as well as in the feudal law, and from which the English "alienation" has been formed. Inst. 2, 8, pr.; Id. 2, 1, 40; Dig. 50, 16, 28; Calvinus, Lex., *Abalienatio.*

ABALIENATION. In the Civil Law, a making over of realty, or chattels to another by due course of law.

ABAMITA. Lat. In the civil law. A great-great-grandfather's sister, *(abavi soror.)* Inst. 3, 6, 6; Dig. 38, 10, 3; Calvinus, Lex. Called *amita maxima.* Id. 38, 10, 10, 17. Called, in Bracton, *abamita magna.* Bract. fol. 68b.

ABANDON. To desert, surrender, forsake, or cede. To relinquish or give up with intent of never again resuming one's right or interest. Burroughs v. Pacific Telephone & Telegraph Co., 220 P. 152, 155, 109 Or. 404. To give up or to cease to use. Southern Ry. Co. v. Commonwealth, 105 S.E. 65, 67, 128 Va. 176. To give up absolutely; to forsake entirely; to renounce utterly; to relinquish all connection with or concern in; to desert. Commonwealth v. Louisville & N. R. Co., 258 S.W. 101, 102, 201 Ky. 670. It includes the intention, and also the external act by which it is carried into effect.

ABANDONEE. A party to whom a right or property is abandoned or relinquished by another. Applied to the insurers of vessels and cargoes. Lord Ellenborough, C.J., 5 Maule & S. 82; Abbott, J., Id. 87; Holroyd, J., Id. 89.

ABANDONMENT. The surrender, relinquishment, disclaimer, or cession of property or of rights. Stephens v. Mansfield, 11 Cal. 363 (land) ; Munsey v. Marnet Oil & Gas Co. (Tex.Civ.App.) 199 S.W. 686, 689 (oil lease) ; Shepard v. Alden, 201 N.W. 537, 539, 161 Minn. 135, 39 A.L.R. 1094 (bowling alleys) ; Union Grain & Elevator Co. v. McCammon Ditch Co., 240 P. 443, 445, 41 Idaho 216 (water rights).

The giving up of a thing absolutely, without reference to any particular person or purpose, as throwing a jewel into the highway; leaving a thing to itself, as a vessel at sea; vacating property with the intention of not returning, so that it may be appropriated by the next corner. 2 Bl. Comm. 9, 10; Judson v. Malloy, 40 Cal. 299, 310. Intention to forsake or relinquish the thing is an essential element, to be proved by visible acts. Sikes v. State, Tex.Cr.App., 28 S.W. 688; Jordan v. State, 107 Tex.Cr.R. 414, 296 S.W. 585, 586 (auto parts) ; Kunst v. Mabie, 72 W.Va. 202, 77 S.E. 987, 990 (uncut timber) ; Dow v. Worley, 126 Okl. 175, 256 P. 56, 60 (oil and gas lease) ; Duryea v. Elkhorn Coal & Coke Corporation, 123 Me. 482, 124 A. 206, 208.

The voluntary relinquishment of possession of thing by owner with intention of terminating his ownership, but without vesting it in any other person. Dober v. Ukase Inv. Co., 139 Or. 626, 10 P. 2d 356, 357. The relinquishing of all title, possession, or claim, or a virtual, intentional throwing away of property. Foulke v. New York Consol. R. Co., 228 N.Y. 269, 127 N.E. 237, 238, 9 A.L.R. 1384 (package in subway car).

Abandonment in law depends upon concurrence of intention to abandon and some overt act or failure to act which carries implication that owner neither claims nor retains any interest. Stinnett v. Kinslow, 238 Ky. 812, 38 S.W.2d 920, 922.

"Abandonment" includes both the intention to abandon and the external act by which the intention is carried into effect. In determining whether one has abandoned his property or rights, the intention is the first and paramount object of inquiry, for there can be no abandonment without the intention to abandon. Boatman v. Andre, 44 Wyo. 352, 12 P.2d 370, 373. Generally, "abandonment" can arise from a single act or from a series of acts. Holly Hill Lumber Co. v. Grooms, 16 S.E.2d 816, 821, 198 S.C. 118.

Time is not an essential element of "abandonment," although the lapse of time may be evidence of an intention to abandon, and where it is accompanied by acts manifesting such an intention, it may be considered in determining whether there has been an abandonment. Ullman ex rel. Eramo v. Payne, 127 Conn. 239, 16 A.2d 286, 287.

Mere nonuser is not necessarily an abandonment. Harnett v. Dickinson, 93 Md. 258. 48 A. 838 (home); Welsh v. Taylor, 131 N.Y. 450, 31 N.E. 896, 18 L.R.A. 535: Phillis v. Gross, 32 S.D. 438. 143 N.W. 373, 378 (contract for deed). See, however, Corkran, Hill & Co. v. A. H. Kuhlemann Co., 136 Md. 525, 111 A. 471, 474 (trademark). Distinguished from neglect: City of Vallezo v. Burrill, 64 Cal.App. 399, 221 P. 676 (pipe line).

"Abandonment" differs from surrender in that surrender requires an agreement, Noble v. Sturm, 210 Mich. 462, 178 N.W. 99, 103; and from forfeiture, in that forfeiture may be against the intention of the party alleged to have forfeited, Gila Water Co. v. Green, 29 Ariz. 304, 241 P. 307, 308.

In the Civil and French Law it is the act by which a debtor surrenders his property for the benefit of his creditors; Merlin, Repert. See Abandonment for Torts.

### Actions, In General

Failure for indefinite period to prosecute action or suit, Morris v. Phifer State Bank, 90 Fla. 55, 105 So. 150, unless caused by an injunction, Barton v. Burbank, 138 La. 997, 71 So. 134. By statute in some states a definite time has been stated which will render a suit abandoned and subject to dismissal. Public Utilities Commission v. Smith, 298 Ill. 151, 131 N.E. 371, 375.

Failure to submit issue by instruction, Unterlachner v. Wells, 317 Mo. 181, 296 S.W. 755, 756; failure to perform conditions necessary to valid appeal or writ of error, Lewis v. Martin, 210 Ala. 401, 98 So. 635; Board of Public Instruction for Marion County v. Goodwin, 89 Fla. 379, 104 So. 779; failure to take issue upon garnishee's answer, Phelps v. Schmuck, 151 Kan. 521, 100 P.2d 67, 71.

### Assignments of Error

Not argued. Meyer v. Hendrix, 311 Ill.App. 605, 37 N.E.2d 445, 446.

Not presented in brief. Roubay v. United States, Q.C.A.Cal., 115 F.2d 49, 50.

Not supported by point, argument or authority. Cone v. Ariss, 13 Wash.2d 650, 126 P.2d 591, 593.

### Bankrupt's Property

In re Mirsky, C.C.A.N.Y., 124 F.2d 1017.

### Building Restrictions

Violations of restrictive covenant, Meyer v. Stein, 284 Ky. 497, 145 S.W.2d 105, 107.

Cemeteries

No new burials and neglect of graves, Andrus v. Remmert, 136 Tex. 179, 146 S.W.2d 728, 730; casual use for farming purpos,s, In re Gundry, 294 Mich. 221, 292 N.W. 709, 711 ; ¡disuse as to new interments, failure to cut grass r care for headstones, In re Board of Transpor ation of City of New York, 251 N.Y.S. 409, 413, 14 Misc. 557.

Children

Desertion or willful forsaking. Cannon v. State, 53 Ga.App. 264, 185 S.E. 364, 366.

Foregoing parental duties. Wright v. Fitzgibbons, Miss., ?1 So.2d 709, 710.

Withdrawal or neglect of parental duties. In re Potter, 85 Wash. 617, 149 P. 23.

Relinquishment of parental claims. Glendinning v. McComas, 188 Ga. 345, 3 S.E.2d 562, 563.

Separation agreement committing custody of child to father. Gardner v. Hall, 132 N.J.Eq. 64, 26 A.2d 799, 809.

Separation from the child and failure to supply its needs. State v. Clark, 148 Minn. 389, 182 N.W. 452, 453.

Criminal offense, separation from child, and failure to supply its needs. Curtis v. State, 48 Ga.App. 135, 172 S.E. 99, 100.

Defeating recovery for wrongful death. In re Schiffrin's Estate, 272 N.Y.S. 583, 585, 152 Misc. 33,

Compensation Claims

Failure to file application for hearing. Hanks v. Southern Public Utilities Co., 210 N.C. 312, 186 S.E. 252.

Condemnation Proceedings

Dismissal of a petition. Will County v. Cleveland, 372 Iii. 111, 22 N.E.2d 929, 930.

Failure of commissioners to report, Kean v. Union County Park Commission, 129 N.J.Eq. 67, 18 A.2d 279, 280, or judgment determining invalidity. City of Los Angeles v. Abbott, Cal., 12 P.2d 19, 22; failure to pay moneys adjudged, Detroit International Bridge Co. v. American Seed Co., 228 N.W. 791, 795, 249 Mich. 289.

Construction Work

Cessation of operation and intent of owner and contractor to cease operations permanently, or at least for definite period, or some fair notice or knowledge of abandonment by lien claimant, actual or implied. Block v. Love, 136 Or. 685, 1 P.2d 588, 589.

Contracts

To constitute "abandonment" by conduct, action relied on must be positive, unequivocal, and inconsistent with the existence of the contract, Mood v. Methodist Episcopal Church South, Tex. Civ.App., 289 S.W. 461, 464. Abandonment is a matter of intent, Lohn v. Fletcher Oil Co., 38 Cal. App.2d 26, 100 P.2d 505, 507, and implies not only nonperformance, but an intent not to perform which may be inferred from acts which necessarily point to actual abandonment, Losei Realty Corporation v. City of New York, 254 N.Y. 41, 171 N.E. 899.

Copyrights

Common-law rights, Tamas v. 20th Century Fox Film Corporation, Sup., 25 N.Y.S.2d 899, 901; sale and delivery of uncopyrighted painting to state-owned public institution, Pushman v. New York Graphic Soc., Sup., 25 N.Y.S.2d 32, 34; copyrighted lectures not delivered to general public, but only to paying audiences and classes, National Institute for Improvement of Memory v. Nutt, D.C.Conn., 28 F.2d 132, 134.

Crops

Sharecropping tenant's willful failure to cultivate crops, Heaton v. Slaten, 25 Ala.App. 81, 141 So. 267, 268.

Ditches

Town's nonuser for a short period after permitting ditch to be blocked was insufficient. Foster v. Webster, Sup., 44 N.Y.S.2d 153, 156. Mere nonuser does not constitute. Musselshell Valley Farming & Livestock Co. v. Cooley, 86 Mont. 276, 283 P. 213, 218. After prescriptive right attached, water shortage in subsequent years rendering use of ditch unnecessary would not constitute. Bowman v. Bradley, 270 P. 919, 922, 127 Or. 45.

Domicile

Permanent removal from, Stafford v. Mills, 57 N.J.L. 570, 31 A. 1023.

Easements

To establish "abandonment" of an easement created by deed, there must be some conduct on part of owner of servient estate adverse to and inconsistent with existence of easement and continuing for statutory period, or nonuser must be accompanied by unequivocal and. decisive acts clearly indicating an intent on part of owner of easement to abandon use of it. Richardson v. Tumbridge, 111 Conn. 90, 149 A. 241, 242.

Permanent cessation of use or enjoyment with no intention to resume or reclaim. Welsh v. Taylor, 134 N.Y. 450, 31 N.E. 896, 18 L.R.A. 535; Corning v. Gould, 16 Wend., N.Y., 531. Intention and completed act are both essential. Town of Orlando v. Stevens, 90 Okl. 2, 215 P. 1050, 1051., Goodman v. Brenner, 219 Mich. 55, 188 N.W. 377; bricking up of the openings for stairway and halls of adjoining buildings, Miller v. Teer, 220 N.C. 605, 18 S.E.2d 173, 178; where object of use of dedicated property wholly fails, Dallas County v. Miller, 140 Tex. 242, 166 S.W.2d 922. But mere nonuser is not sufficient. Smelcer v. Rippetoe, 24 Tenn.App. 516, 147 S.W.2d 109, 113, 114; O'Barr v. Duncan, 187 Ga. 642, 2 S.E.2d 82, 83; right of way acquired by grant. Burnham v. Mahoney, 222 Mass. 524, 111 N.E. 396, 398; Raleigh, C. & S. Ry. Co. v. McGuire, 171 N.C. 277, 88 S.E. 337, 339. Where owner of building had easement in adjoining wall, wrecking building preparatory to erection of a new building, did not cause loss of easement. Joel v. Publix-Lucas Theater, 193 Ga. 531, 19 S.E.2d 730, 736. And a mere temporary or occasional obstruction or use of an easement by the servient owner is not an "abandonment". Gerber v. Appel, Mo.App., 164 S.W.2d 225, 228. However nonuser of railroad crossing for more than 20 years, and

conveyance of strips of land adjoining original right of way to railroad in fee simple, without reservation, constituted abandonment of easement in crossing. Cityco Realty Co. v. Philadelphia, B. & W. R. Co., 158 Md. 221, 148 A. 441, 444.

### Employment

During Christmas holidays, notwithstanding a call at employer's office and discussing business, Stinson v. Dairymen's League Co-op. Ass'n, 186 A. 687, 688, 14 N.J.Misc. 671. Deviation from route, Loper v. Morrison, 145 P.2d 4, 23 Cal.2d 600; truck driver unnecessarily permitting passenger to drive, Ginther v. J. P. Graham Transfer Co., 33 A. 2d 923, 924, 348 Pa. 60. Contra where truck driver remained on driver's seat, directing operation of truck, and watched passenger's driving, Ginther v. J. P. Graham Transfer Co., 27 A.2d 712, 714, 149 Pa.Super. 635; and where truck driver became sick, Matzek v. United Storage & Trucking Co., 186 A. 193, 122 Pa.Super. 146. Truck drivers becoming intoxicated and remaining from work, Naylon v. State, Ct.C1., 40 N.Y.S.2d 587, 590; Coal miner contrary to orders, riding on an empty car, Soroka v. Philadelphia & Reading Coal & Iron Co., 138 Pa.Super. 296, 10 A.2d.904, 907. But automobile driver's choosing longer route by paved highways to pick up a needed change of clothing at home did not constitute an "abandonment" of his employment. Mitchell v. Mitchell Drilling Co., 154 Kan. 117, 114 P.2d 841, 844.

### Exceptions on Appeal

Not argued in brief, Currin v. Currin, 219 N.C. 815, 15 S.E.2d 279, 282. Not set out in brief, Star Mfg. Co. v. Atlantic Coast Line R. Co., 222 N.C. 330, 23 S.E.2d 32, 40. Not complaining of rulings on exceptions, Buckalew v. Brockner, La:App., 11 So.2d 720, 722. Failing to answer appeal to re-urge exception, John Myers Implement Co. v. De Boer, La.App., 9 So.2d 832, 833. Filing answers without insisting on decision on exceptions to jurisdiction ratione personae, Weaver v. Mansfield Hardwood Lumber Co., La.App., 4 So.2d 781, 782.

### Family

Where father during three or four months following his departure contributed only $32 to support of wife and three minor children, Howton v. Howton, 51 Cal.App.2d 323, 124 P.2d 837, 839. Contra where father helped to support family, In re Hess' Estate, 257 N.Y.S. 278, 282, 143 Misc. 335.

### Franchises

'Inferior service and lack of any service for few short intervals held insufficient to show "abandonment" of ferry franchise. McConnell v. Crittenden County, 250 Ky. 359, 63 S.W.2d 329.

### Highways

Where public ceases to use street or highway under circumstances indicating intent to abandon, Grand Trunk Western R. Co. v. City of Flint, D. C.Mich., 55 F.2d 384, 386. But short sections of highway, discontinued by state highway commission upon relocating highway, were not abandoned. Mosteller v. Southern Ry. Co., 220 N.C. 275, 17 S.E.2d 133, 135. And cultivation of highway for short period by abutting landowners was not an "abandonment" of highway. Chicago & E. I. Ry. Co. v. Road Dist. No. 10, 353 Ill. 160, 187 N.E. 155, 157.

### Homesteads

Removal with an intention never to return constitutes an "abandonment", and nothing less does. Farmers' State Bank of Georgetown v. Roberts, Tex.Civ.App., 59 S.W.2d 1089. Must be voluntary action, Wood v. Wood, 203 Ark. 344, 157 S.W.2d 36, 38. Temporary absence with intention to return, Brewer v. Brewer, 268 Ky. 625, 105 S.W.2d 582, 584. Absence of a design of permanent abandonment, Lanier v. Lanier, 95 Fla. 522, 116 So. 867, 868. Absence by necessity, Hinds v. Buck, 177 Tenn. 444, 150 S.W.2d 1071, 1072; sickness, In re Dunlap's Estate, 161 Or. 93, 87 P.2d 225, 229; advancing years and inability to care for selves, Gulf Production Co. v. Continental Oil Co., Tex., 132 S.W.2d 553, 573, 576; to rent to winter tourists, Collins v. Collins, 150 Fla. 374, 7 So. 443, 444. A deed with reservation of a life estate did not constitute "abandonment" of homestead. Arighi v. Rule & Sons, 41 Cal.App. 852, 107 P.2d 970, 972. Nor did filing of suit to partition land. Carr v. Langford, Tex.Civ.App., 144 S.W.2d 612, 613.

### Husband

The act of a husband or wife who leaves his or her consort willfully, and with an intention of causing perpetual separation. People v. Cullen, 153 N.Y. 629, 47 N.E. 894, 44 L.R.A. 420.

Wife's leaving husband for a trip to Europe of less than two months against husband's wishes, did not constitute. In re Boesenberg's Estate, 37 N.Y.S.2d 194, 196, 179 Misc. 3.

Abandonment as cause for divorce must be willful and intentional without intention of returning, and without consent of spouse abandoned. Hickey v. Hickey, 152 Wash. 429, 277 P. 994, 995. Husband forcibly expelling wife from home, Tenorio v. Tenorio, 44 N.M. 89, 98 P.2d 838, 847. Refusal to talk to husband did not establish. Wyahllyeth v. Wyahllyeth, 182 Md. 663, 32 A.2d 380, 381. Wife refusing without good cause to accompany husband when moving, Ventrano v. Vetrano, 54 N.Y.S.2d 537, 539.

Word "abandoned," within statute providing that no wife who has abandoned husband shall have right of election to take against provisions of husband's will, has meaning ascribed thereto in matrimonial litigations, and carries no connotation of infidelity. Adultery of abandoned wife did not constitute "abandonment". In re Green's Estate, 280 N.Y.S. 692, 702, 155 Misc. 641.

A wife who told husband to get out of wife's home, and made no effort to effect a reconciliation, was not entitled to appointment as administratrix of his estate. In re Banaszak's Estate, 1 N.Y.S.2d 15, 164 Misc. 829.

Where husband paid wife living apart in caring for their child, she had not abandoned husband so as to preclude the recovery of an industrial pension for his death. Johnson v. Department of Labor and Industries of Washington, 3 Wash.2d 257, 100 P.2d 382, 385. But wife who had, prior to husband's death, left husband, resisted efforts toward a reconciliation, and instituted annulment proceedings, was not entitled to compensation for husband's death. La Fountain v. Industrial Accident Commission, 13 Cal.App.2d 130, 56 P.2d 257, 258.

### Insured Property

A relinquishment or cession of property by the owner to the insurer of it, in order to claim as for

a total loss. Chicago S. S. Lines v. U. S. Lloyds, C.C.A.I11., 12 F.2d 733, 738.

The term is used only in reference to risks in navigation; but the principle is applicable in fire insurance, where there are remnants, and sometimes, also, under stipulations in life policies in favor of creditors. Cincinnati Ins. Co. v. Duffield, 6 Ohio St. 200, 67 Am. Dec. 339.

### Inventions

The giving up of rights by inventor, as where he surrenders his idea or discovery or relinquishes the intention of perfecting his invention, and so throws it open to the public, or where he negligently postpones the assertion of his claims or fails to apply for a patent, and allows the public to use his invention. Electric Storage Battery Co. v. Shimadzu, Pa., 59 S.Ct. 675, 681, 307 U.S. 5, 613, 616, 83 L.Ed. 1071.

Disclaimer of claim of patent, Triumph Explosives v. Kilgore Mfg. Co., C.C.A.Md., 128 F.2d 444, 448; delaying 12 years after reducing shoe to practice before applying for patent, Salisbury v. Pediforme Shoe Co., D.C.N.Y., 31 F.Supp. 3, 7; omitting for many years to take any step to reinstate or renew rejected application, Na-Mac Products Corporation v. Federal Tool Corporation, c.c.A.m., 118 F.2d 167, 171; acquiescing in rejection of claims in patent application for device shown in later application for patent, Na-Mac Products Corporation v. Federal Tool Corporation, C.C.A.Ill., 118 F.2d 167, 171; Na-Mac Products Corporation v. Federal Tool Corporation, D.C.Ill., 36 F.Supp. 426, 430. But mere lapse of time before an inventor applies for a patent is not sufficient. Imperial Brass Mfg. Co. v. Bonney Forge & Tool Works, D.C.Pa., 38 F. Supp. 829, 832. Patent application was not filed until 21/2 years after date of conception of invention, Chicago Rawhide Mfg. Co. v. National Motor Bearing Co., D.C.Cal., 50 F.Supp. 458, 460. Nor is disclosing invention to individuals with purpose of interesting them in production or manufacture. Pennington Engineering Co. v. Houde Engineering Corporation, D.C.N.Y., 43 F.Supp. 698, 706.

### Leases in General

To constitute an "abandonment" of leased premises, there must be an absolute relinquishment of premises by tenant consisting of act and intention. Schnitzer v. Lanzara, 115 N.J.L. 332, 180 A. 234.

Closing up butcher shop with intention of giving up business and in removing all perishable merchandise, although tenant retained key and did not notify landlord of intention to vacate premises, held an "abandonment" and not a "surrender" of premises. Schnitzer v. Lanzara, 115 N. J.L. 332, 18 A. 234. Refusal by lessee of lessor's offer to reconstruct burned building, Girard Trust Co. v. Tremblay Motor Co., 291 Pa. 507, 140 A. 506, 512. But tenants surrendering premises pursuant to notice of forfeiture did not "abandon" premises. Becker v. Rute, 228 Iowa 533, 293 N.W. 18, 21.

### Marriage

Withdrawal or denial of marital obligations without just cause, Reppert v. Reppert, Del.Super., 13 A.2d 705, 1 Terry 492.

### Mineral Leases

"Abandonment" consists of an actual act of relinquishment, accompanied with the intent and purpose permanently to give up a claim and right of property. A distinction exists between "abandonment" and "surrender" which is the relinquishment of a thing or a property right thereto to another, which is not an essential element of abandonment. Distinction also exists between elements of "abandonment" and those of estoppel. Neither formal surrender of oil and gas lease nor release is necessary to effectuate "abandonment." Sigler Oil Co. v. W. T. Waggoner Estate, Tex.Civ. App., 276 S.W. 936, 938. Voluntary, intentional relinquishment of known right. Pure Oil Co. v. Sturm, 43 Ohio App. 105, 182 N.E. 875, 882.

Failing to start work under the lease for more than 40 years, Chapman v. Continental Oil Co., 149 Kan. 822, 89 P.2d 833, 834; breach of implied obligation to proceed with search and development of land with reasonable diligence, Wood v. Arkansas Fuel Oil Co., D.C.Ark., 40 F. Supp. 42, 45; no drilling on leased land for more than two years, and failure to pay rentals, Rehart v. Klossner, 48 Cal.App.2d 40, 119 P.2d 145, 147; drawing of casing from well with no intention of replacing it, Seaboard Oil Co. v. Commonwealth, 193 Ky. 629, 237 S.W. 48, 50. But there must be an intention by lessee to relinquish leased premises, Carter Oil Co. v. Mitchell, C.C.A.Okl., 100 F.2d 945, 950, 951; or an intention not to drill, Carter Oil Co. v. Mitchell, C.C.A.Okl., 100 F.2d 945, 950, 951. And ceasing of operations is not alone sufficient. Fisher v. Dixon, 188' Okl. 7, 105 P.2d 776, 777. Doing no substantial work for about one year immediately preceding suit to cancel lease, but remaining in possession and doing some work, Deace v. Stribling, Tex.Civ.App., 142 S.W.2d 564, 567; disconnection of well for a brief interval while well was being drilled to a greater depth, Cole v. Philadelphia Co., 345 Pa. 315, 26 A.2d 920, 923; abandoning work on unproductive well was not an abandonment of leased premises. Smith v. Tullos, 195 La. 400, 196 So. 912, 914.

### Mining Claims

Relinquishment of a claim held by location without patent, where the holder voluntarily leaves his claim to be appropriated by the next corner, without any intention to retake or resume it, and regardless of what may become of it in the future. O'Hanlon v. Ruby Gulch Mining Co., 48 Mont. 65, 135 P. 913, 918. The term includes both the intention to abandon and the act by which the abandonment is carried into effect. Peachy v. Frisco Gold Mines Co., D.C.Ariz., 204 F. 659, 668.

Abandonment takes place whenever locator leaves claim without intention of holding it. Crane v. French, 39 Cal. App.2d 642, 104 P.2d 53, 60. But mere absence from claim, is not sufficient. Crane v. French, 39 Cal.App.2d 642, 104 P.2d 53, 60. And one co-owner's abandoning his interest is not an "abandonment" of entire claim. Crane v. French, 39 Ca1.App.2d 642, 104 P.2d 53, 60.

### Motions

Motion not called to court's attention until final hearing, Williams v. Smith, 149 Fla. 735, 6 So.2d 853, 854. Grounds not insisted on, Meador v. Nowell, 67 Ga.App. 564, 21 S.E.2d 312, 314; not argued in brief, In re Horton's Estate, 154 Kan. 269, 118 P. 2d 527, 531. Rulings not urged on appeal, Spears v. Brown Paper Mill Co., La.App., 9 So.2d 332, 334. Admitting sufficiency of evidence to sustain verdict, Copeland v. State, 66 Ga.App. 142, 17 S.E.2d 288, 289. But service of answer after making of motion to strike out portions of a complaint was not an "abandonment" of the motion. Russo v. Signode Steel Strapping Co., Sup., 37 N.Y.S.2d 166.

### Office

Abandonment of a public office is a species of resignation, but differs from resignation in that

resignation is a formal relinquishment, while abandonment is a voluntary relinquishment through nonuser. State v. Harmon, 115 Me. 268, 98 A. 804, 805.

It is not wholly a matter of intention, but may result from the complete abandonment of duties of such a continuance that the law will infer a relinquishment. Wilkinson v. City of Birmingham, 193 Ala. 139, 68 So. 999, 1002. It must be total, and under such circumstances as clearly to indicate an absolute relinquishment; and whether an officer has abandoned an office depends on his overt acts rather than his declared intention. Parks v. Ash, 168 Ga. 868, 149 S.E. 207, 209. It implies nonuser, but nonuser does not, of itself constitute abandonment. The failure to perform the duties pertaining to the office must be with actual or imputed intention on the part of the officer to abandon and relinquish the office. The intention may be inferred from the acts and conduct of the party, and is a question of fact. Abandonment may result from an acquiescence by the officer in his wrongful removal or discharge, but, as in other cases of abandonment, the question of intention is involved. McCall v. Cull, 51 Ariz. 237, 75 P.2d 696, 698.

Temporary absence is not ordinarily sufficient to constitute an "abandonment of office". State v. Green, 206 Ark. 361, 175 S.W.2d 575, 577. Responding to mandatory call for military service in emergency conditions, Caudel v. Prewitt, 296 Ky. 848, 178 S.W.2d 22, 25. And failure of former officers to assert right while decision of eligibility of elected successors was pending, was not an "abandonment" creating vacancy. State v. Levy Court of New Castle County, Del., 3 W.W.Harr. 554, 140 A. 642, 645.

### Oil Wells

Where owner ceased working on well to work elsewhere to procure money to do further work on well, well was not abandoned. Jones v. Jos. Greenspon's Son Pipe Corporation, 313 Ill.App. 651, 40 N.E.2d 561.

### Patents

There may be an abandonment of a patent, where the inventor dedicates it to the public use; and this may be shown by his failure to sue infringers, sell licenses, or otherwise make efforts to realize a personal advantage from his patent. Ransom v. New York, 4 Blatchf. 157, 20 Fed.Cas. 286.

### Pleadings

The filing of a second amended complaint which was complete in itself and which did not reserve to itself any part of the original complaint or first amended complaint constituted an "abandonment" of the two former complaints. Seely v. Gilbert, 16 Wash.2d 611, 134 P.2d 710, 712. Cross-complainant by failing to take proper steps in trial court to have judgment that was silent on issues tendered by cross-complaint and answer thereto corrected did not thereby "abandon" cross-complaint. Brown v. National Life Ins. Co. of Washington County, Vt., 112 Ind.App. 684, 46 N.E. 2d 246, 249.

### Prescriptive Rights

Non-use alone is insufficient. Burkman v. City of New Lisbon, 246 Wis. 547, 19 N.W.2d 311, 313; Smelcer v. Rippetoe, 24 Tenn.App. 516, 147 S.W.2d 109, 113, 114.

### Privileges

Witness before grand jury who answered questions and immediately asked to retract answers, and thereupon asserted his privilege, did not "abandon" right to claim the privilege. United States v. Weisman, C.C.A.N.Y., 111 F.2d 260, 261.

### Property

"Abandoned property" in a legal sense is that to which owner has relinquished all right, title, claim, and possession, with intention of not reclaiming it or resuming its ownership, possession or enjoyment. Jackson v. Steinberg, Or., 200 P.2d 376, 377, 378.

There must be concurrence of act and intent, that is, the act of leaving the premises or property vacant, so that it may be appropriated by the next comer, and the intention of not returning. Cohn v. San Pedro, L. A. & S. L. R. Co., 103 Cal.App. 496, 284 P. 1051, 1052. Relinquishment of all title, possession, or claim; a virtual intentional throwing away of property. Ex parte Szczygiel, Sup., 51 N.Y.S.2d 699, 702. Actual relinquishment, gas in pipe was not abandoned. Hein v. Shell Oil Co., 315 Ill.App. 297, 42 N.E.2d 949, 952. Nor was a sewing machine and phonograph left with landlady as security. Dickens v. Singer Sewing Mach. Co., 140 So. 296, 298, 19 La.App. 735.

### Property for Special Purposes

Moving of church to erect drilling rig held not "abandonment of use for church purposes." Abandonment meant to wholly discontinue church use, and additional use was not sufficient. Skipper v. Davis, Tex.Civ.App., 59 S.W.2d 454, 457.

Merger of churches was not. Bridgeport-City Trust Co. v. Bridgeport Hospital, 120 Conn. 27, 179 A. 92, 94. Nor where intention was that nonconforming use as a fraternity house would be resumed. State ex rel. Morehouse v. Hunt, 235 Wis. 358, 291 N.W. 745, 751, 752. Nor mere cessation of a nonconforming use in zoned area for a reasonable period. Beyer v. Mayor and Council of Baltimore City, Md., 34 A.2d 765, 768, 769. Nor a discontinuance of a garage during war while owner served in army and on return postponed repossession for garage purposes due to city's using building. State v. Murray, 195 Wis. 657, 219 N.W. 271, 272. But removal of manufacturing equipment from manufacturing plant, was. Francisco v. City of Columbus, Ohio App., 31 N.E.2d 236, 243. And also disposing of all machinery, taking down smokestack and using property for storage purposes, notwithstanding vague intention of resuming slaughter house business. Beyer v. Mayor and City Council of Baltimore City, 182 Md. 444, 34 A.2d 765, 768, 769.

Dedicated use must wholly fail. Kirchen v. Remenga, 291 Mich. 94, 288 N.W. 344, 350, 351. Erection of buildings on park lands without objection of adjoining owners was not sufficient. Kirchen v. Remenga, 291 Mich. 94, 288 N.W. 344, 350, 351. Nor city's permitting a citizen's rock garden on small portion of street improvement tract. Kendrick V. City of St. Paul, 213 Minn. 283, 6 N.W.2d 449, 451. Nor diverting parkway to roadway. Ford v. City of Detroit, 273 Mich. 449, 263 N.W. 425, 426. Nor tearing down school building for salvaging material for erection of a waiting station for school children. McCullough v. Swifton Consol. School Dist., 202 Ark. 1074, 155 S.W.2d 353. Nor temporary disuse of school when land was offered for sale, later rescinded. Bernard v. Bowen, 214 N.C. 121, 198 S.E. 584.

### Railroad Property

"Abandon" means to relinquish or give up with intent of never again resuming or claiming one's rights or interests in, to give up absolutely, to forsake entirely, to renounce utterly, to relinquish all connection with or concern in. Capital Transit Co. v. Hazen, 93 F.2d 250, 251, 68 App.D.C. 91. Abandonment did not mean a partial disuse with an intention to complete station on a contingency, but meant a final relinquishment, or giving up with-

out intention of resuming. Wheeling & L. E. Ry. Co. v. Pittsburgh & W. V. Ry. Co., C.C.A.Ohio, 33 F.2d WO, 392. And to constitute an "abandonment" of right of way, there must be not only an actual relinquishment of the property, but an intention to abandon it. Abens v. Chicago, B. & Q. R. Co., 388 Ill. 261, 57 N.E.2d 883, 887.

Nonuser is a fact in determining it, but, though continued for years, is not conclusive. Arlington Realty Co. v. Keller, 105 N.J.Eq. 196, 147 A. 437, 438. Plowing up servient estate is not enough. Les v. Alibozek, 269 Mass. 153. 168 N.E. 919, 922, 66 A.L.R. 1094. Nor proposal to deliver and receive freight by motortrucks. New York Dock Ry. v Pennsylvania R. Co., D.C.Pa., 1 F.Supp. 20, 21. But failure to maintain and use that part of railroad on land conveyed constituted "abandonment." Atlantic Coast Line R. Co. v. Sweat, 177 Ga. 698, 171 S.E. 123, 129.

### Remedies

Election of one of two inconsistent remedies, Lumber Mutual Casualty Ins. Co. of New York v. Friedman, 176 Misc. 703, 28 N.Y.S.2d 506, 509.

### Rights in General

The relinquishment of a right. It implies some act of relinquishment done by the owner without regard to any future possession by himself, or by any other person, but with an intention to abandon. Dyer v. Sanford, 9 Mete., Mass., 395, 43 Am. Dec. 399.

It Is properly confined to incorporeal hereditaments, since legal rights once vested must be divested according to law. But equitable rights may be abandoned. Great Falls Co. v. Worster, 15 N.H. 412; Cox v. Colossal Cavern Co., 210 Ky. 612, 276 S.W. 540; Inhabitants of School Dist. No. 4 v. Benson, 31 Me. 381, 52 Am. Dec. 618.

### Ship and Freight

Act by which shipowner surrenders ship and freight to a trustee for benefit of claimants. See 46 U.S.C.A. § 185; Ohio Transp. Co. v. Davidson S. S. Co., 148 F. 185, 78 C.C.A. 319.

In France and other countries it is the surrender to a person having a claim arising out of a contract made with the master. American Transp. Co. v. Moore, 5 Mich. 368.

### Taxing Power

Delegation of taxing power by legislature to city was not "abandonment of taxing power". Mouledoux V. Maestri, 197 La. 525, 2 So.2d 11, 16.

### Trade-marks and Trade Names

There must be not only nonuser, but also an intent to abandon. Rockowitz Corset & Brassiere Corporation v. Madame X Co., 248 N.Y. 272, 162 N. E. 76, 78; Manz v. Philadelphia Brewing Co., D.C. Pa., 37 F.Supp. 79, 81. To give up use of trademarks permanently. Neva-Wet Corporation of America v. Never Wet Processing Corporation, 277 N.Y. 163, 13 N.E.2d 755, 761.

Disuse not sufficient in itself. Sherwood Co. v. Sherwood Distilling Co., 177 Md. 455, 9 A.2d 842, 845. Nor using owner's name. Bunte Bros. v. Standard Chocolates, D.C. Mass., 45 F.Supp. 478, 480. However, nonuser with extensive use by another is sufficient. Sherwood Co. v. Sherwood Distilling Co., 177 Md. 455, 9 A.2d 842, 845. But not where receiver continuously operated trade-mark licensee's property. American Dirigold Corporation v. Dirigold Metals Corporation. C.C.A.Mich., 125 F.2d 446, 454. Nor sale of all physical assets of manufacturing company by trustee in bankruptcy. Reconstruction Finance Corporation v. J. G. Menihan Corporation, D.C.N.Y., 28 F.Supp. 920, 923.

### Trusts

State aid for hospital, with stipulation for beds for emergency cases, did not establish an "abandonment of trust". Noble v. First Nat. Bank of Anniston, 241 Ala. 85, 1 So.2d 289, 291.

### Water Rights

"'Abandonment," as applied to water rights may be defined to be an intentional relinquishment of a known right. It is not based on a time element, and mere nonuser will not establish "abandonment" for any less time," at least, than statutory period, controlling element in "abandonment" being matter of intent. Hammond v. Johnson, 94 Utah 20, 66 P.2d 894, 899. To desert or forsake right. The intent and an actual relinquishment must concur. Central Trust Co. v. Culver, 23 Colo. App. 317, 129 P. 253, 254. Concurrence of relinquishment of possession, and intent not to resume it for beneficial use. Neither alone is sufficient. Osnes Livestock Co. v. Warren, 103 Mont. 284, 62 P.2d 206, 211.

Not using water when there was no water in creek because of another user's obstruction of flow and appropriation of all the water did not constitute. New Mexico Products Co. v. New Mexico Power Co., 42 N.M. 311, 77 P.2d 634, 641. Nor did milling company's permitting water's use by upper irrigators. Hutchinson v. Stricklin, 146 Or. 285, 28 P.2d 225, 230. Nor permitting upper appropriators to erect dam and store water. Irion v. Hyde, Mont., 81 P. 2d 353, 356. Nor change of place of use of decreed water right. Harris v. Chapman, 51 Idaho 283, 5 P.2d 733, 737. Nor failure to use all water to which entitled. Horse Creek Conservation Dist. v. Lincoln Land Co., 54 Wyo. 320, 92 P.2d 572, 577. Use of only enough water to water stock. because supply was insufficient to irrigate land. Federal Land Bank v. Morris, 112 Mont. 445, 116 P.2d 1007, 1010. But right to use a particular quantity of water may be abandoned by failure to apply such water to a beneficial use for an unreasonable period of time. Cundy v. Weber, 68 S.D. 214, 300 N.W. 17, 22.

### Wife

Abandonment justifying divorce is a voluntary, unjustified, and final separation of one of married parties from the other, accompanied by an intention to terminate the marital relation, or an unjustified refusal to resume suspended cohabitation, as where husband left his wife because his children by former marriage could not live peaceably with second wife. Schwartz v. Schwartz, 158 Md. 80, 148 A. 259, 263.

Refusal by husband of request by sick wife without means of support, to return to home held "abandonment" as respects disorderly conduct. People v. Schenkel, 252 N.Y.S. 415, 418, 140 Misc. 843. Contra where separation agreement existed. People v. Gross, 291 N.Y.S. 597, 601, 161 Misc. 514. Where parties separated by agreement, and husband, in lieu of periodic payments for wife's support, made conveyance constituting valuable consideration, held not "abandonment" as respects husband's statutory right against wife's will. In re McCann's Estate, 281 N.Y.S. 445, 155 Misc. 763; or even if wife was justified in leaving husband on account of his cruel treatment, there must be a desertion without consent. In re Stolz' Estate, 260 N.Y.S. 906, 145 Misc. 799. But while there can be no "desertion" for divorce where parties are apart by consent, yet there may be an "abandonment" as respects separate maintenance, although the separation originated and continued by consent of parties. Pierson v. Pierson, 189 A. 391, 395,

15 N.J.Misc. 117. And as respects maintenance, husband's conduct rendering wife's condition unendurable constitutes "abandonment." Carder v. Carder, 227 Mo.App. 1005, 60 S.W.2d 706. Cruel treatment, Fallon v. Fallon, 111 N.J. Eq. 512, 162 A. 406, 408. Husband's refusal of wife's request to resume living with her, Clark v. Clark, 176 A. 81, 83, 13 N.J.Misc. 49; or refusal to receive wife at his residence, is an "abandonment" of her. Hockaday v. Hockaday, 182 La. 88, 161 So. 164. But not a husband's removal from wife's home after wife had instituted separation action, Kenneson v. Kenneson, 36 N.Y.S.2d 676, 685, 178 Misc. 832; or where husband moved out on command of wife's father. Anonymous v. Anonymous, 24 N.Y.S.2d 613, 618. Mere failure to support wife is not an abandonment within Divorce Act. Biddle v. Biddle, 104 N.J.Eq. 313, 145 A. 639, 640; but failing to provide wife with necessities, etc., is. Cooper v. Cooper, 176 Md. 695, 4 A.2d 714, 716. And convict sentenced for life did not abandon wife. In re Lindewall's Will, 18 N.Y.S.2d 281, 284, 259 App. Div. 196.

ABANDONMENT FOR TORTS. In the civil law. The relinquishment of a slave or animal who had committed a trespass to the person injured, in discharge of the owner's liability for such trespass or injury. Just. Inst. 4, 8, 9. A similar right exists in Louisiana. Fitzgerald v. Ferguson, 11 La.Ann. 396.

ABANDUN, ABANDUM, or ABANDONUM. Anything sequestered, proscribed, or abandoned. *Abandon, i. e., in bannum res missa,* a thing banned or denounced as forfeited or lost, whence to *abandon, desert,* or *forsake,* as lost and gone. Cunningham; Cowell.

ABARNARE. Lat. To discover and disclose to a magistrate any secret crime. *Leges Canuti,* cap. 10.

ABATABLE NUISANCE. A nuisance which is practically susceptible of being suppressed, or extinguished, or rendered harmless, and whose continued existence is not authorized under the law. Fort Worth & Denver City Ry. Co. v. Muncy, Tex. Civ.App., 31 S.W.2d 491, 494.

ABATAMENTUM. L. Lat. In old English law. An abatement of freehold; an entry upon lands by way of interposition between the death of the ancestor and the entry of the heir. Co. Litt. 277a; Yel. 151.

ABATARE. To abate. Yel. 151.

ABATE. To throw down, to beat down, destroy, quash. 3 Shars. Bla. Com. 168; Klamath Lumber Co. v. Bamber, 142 P. 359, 74 Or. 287. , To do away with or nullify or lessen or diminish, In re Stevens' Estate, Cal.App., 150 P.2d 530, 534; to bring entirely down or demolish, to put an end to, to do away with, to nullify, to make void, Sparks Milling Co. v. Powell, 283 Ky. 669, 143 S.W.2d 75, 77.

See, also, Abatement; Abatement and Revival.

ABATEMENT. A reduction, a decrease, or a diminution. The Vestris, D.C.N.Y., 53 F.2d 847, 852.

A judgment afforded a defense by way of abatement. Panos v. Great Western Packing Co., Cal.App, , 126 P.2d 889, 892.

Contracts

A reduction made by the creditor for the prompt payment of a debt due by the payor or debtor. Wesk. Ins. 7.

Debts

In equity, when equitable assets are insufficient to satisfy fully all the creditors, their debts must abate in proportion, and they must be content with a dividend, for *cequitas est quasi cequalitas.*

Freehold

The unlawful entry upon and keeping possession of an estate by a stranger, after the death of the ancestor and before the heir or devisee takes possession. Such an entry is technically called an "abatement," and the stranger an "abator." It is, in fact, a figurative expression, denoting that the rightful possession or freehold of the heir or devisee is overthrown by the unlawful intervention of a stranger. Abatement differs from intrusion, in that it is always to the prejudice of the heir or immediate devisee, whereas the latter is to the prejudice of the reversioner or remainder-man; and disseisin differs from them both, for to disseise is to put forcibly or fraudulently a person seised of the freehold out of possession. Brown v. Burdick, 25 Ohio St. 268. By the ancient laws of Normandy, this term was used to signify the act of one who, having an apparent right of possession to an estate, took possession of it immediately after the death of the actual possessor, before the heir entered. (Howard, Anciennes Lois des Francais, tome 1, p. 539.)

Legacies

A proportional diminution or reduction of the pecuniary legacies, when the funds or assets out of which such legacies are payable are not sufficient to pay them in full. Ward, Leg. p. 369, c. 6, § 7; 1 Story, Eq. Jur. § 555; 2 Bl. Comm. 512, 513; In re 'Hawgood's Estate, 37 S.D. 565, 159 N.W. 117, 123. Legacy accepted in lieu of dower. In re Hartman's Estate, 233 Iowa 405, 9 N.W.2d 359, 362.

Nuisance

The removal of a nuisance. 3 Bla. Comm. 5. See Nuisance.

Taxes and Duties

A drawback or rebate allowed in certain cases on the duties due on imported goods, in consideration of their deterioration or damage suffered during importation, or while in store. A diminution or decrease in the amount of tax imposed upon any person. Rogers v. Gookin, 198 Mass. 434, 85 N.E. 405 (real estate taxes); Central National Bank v. City of Lynn, 156 N.E. 42 (Shares in national banks) 259 Mass. 1.

As applied to taxation, it presupposes error or mistake in assessment. Gulf States Steel Co. v. U. S., C.C.A.Ala., 56 F.2d 43, 46.

Abatement of taxes relieves property of its share of the burdens of taxation after the assessment has been made and the tax levied. Sheppard v. Hidalgo County, 126 Tex. 550, 83 S.W.2d 649, 657.

ABATEMENT AND REVIVAL

Actions at Law

As used in reference to actions at law, word abate means that action is utterly dead and cannot be revived except by commencing a new action. First Nat. Bank v. Board of Sup'rs of Harrison County, 221 Iowa 348, 264 N.W. 281, 106 A.L.R. 566.

The overthrow of an action caused by the defendant's pleading some matter of fact tending to impeach the correctness of the writ or declaration, which defeats the action for the present, but does not debar the plaintiff from recommencing it in a better way. 3 Bla. Comm. 301; 1 Chit. Pl. (6th Lond. Ed.) 446; Guild v. Richardson, 6 Pick. (Mass.) 370; Wirtele v. Grand Lodge A. 0. U. W., 111 Neb. 302, 196 N.W. 510. See Plea in Abatement.

To put a final end to suit, Dodge v. Superior Court in and for Los Angeles County, 139 Cal.App. 178, 33 P.2d 695, 696; overthrow of pending action apart from cause of action, Burnand v. Irigoyen, 56 Cal.App.2d 624, 133 P.2d 3, 6.

On plaintiff's death, Piukkula v. Pillsbury Astoria Flouring Mills Co., 150 Or. 304, 44 P.2d 162, 99 A.L.R. 259. Mere lapse of time between the death of a party and the taking of necessary steps to continue the action by or against the heir or personal representative does not work an abatement, Whaley v. Slater, 202 S.C. 182, 24 S.E.2d 266, 267.

Cause of Action

Destruction of cause of action. In re Thomasson, Mo., 159 S.W.2d 626, 628.

Chancery Practice

It differs from an abatement at law in this: that in the latter the action is entirely dead and cannot be revived; but in the former the right to proceed is merely suspended, and may be revived; F. A. Mfg. Co. v. Hayden & Clemons, C.C.A.Mass., 273 F. 374; Mutual Ben. Health & Accident Ass'n v. Teal, D.C.S.C., 34 F.Supp. 714, 716.

In England, declinatory pleas to the jurisdiction and dilatory to the persons were (prior to the judicature act) sometimes, by analogy to common law, termed "pleas In abatement."

Declinatory and dilatory pleas, see Story, Eq. Pl. § 708.

Death of one of parties, Geiger v. Merle, 360 Ill. 497, 196 N.E. 497, 502. Want of proper parties, 2 Tidd Pr. 932; Story, Eq.P1. § 354; Witt v. Ellis, 2 Cold., Tenn., 38; petition for widow's allowance, In re Samson's Estate, 142 Neb. 556, 7 N.W.2d 60, 62, 144 A.L.R. 264.

ABATOR. In real property law, a stranger who, having no right of entry, contrives to get possession of an estate of freehold, to the prejudice of the heir or devisee, before the latter can enter, after the ancestor's death. Litt. § 397. In the law of torts, one who abates, prostrates, or destroys a nuisance.

ABATUDA. Anything diminished. *Moneta abatuda* is money clipped or diminished in value. Cowell; Dufresne.

ABAVIA. Lat. In the civil law. A great-great-grandmother. Inst. 3, 6, 4; Dig. 38, 10, 1, 6; Bract. fol. 68b.

ABAVITA. A great-great-grandfather's sister. Bract. fol. 68b. This is a misprint for abamita (q. v.). Burrill.

ABAVUNCULUS. Lat. In the civil law. A great-great-grandmother's brother *(avavice frater).* Inst. 3, 6, 6; Dig. 38, 10, 3; Calvinus, Lex. Called *avunculus maximus.* Id. 38, 10, 10, 17. Called by Bracton and Fleta *abavunculus magnus.* Bract. fol. 68b; Fleta, lib. 6, c. 2, § 19.

ABAVUS. Lat. In the civil law. A great-great-grandfather. Inst. 3, 6, 4; Dig. 38, 10, 1, 6; Bract. fol. 67a.

ABBACINARE. To blind by placing a burning basin or red-hot irons before the eye's. A form of punishment in the Middle Ages. Also spelt abacinare. The modern Italian is spelt with two b's, and means to blind. Abbacination. Blinding by placing burning basin or red-hot irons before the eyes. See Abbacinare.

ABBACY. The government of a religious house, and the revenues thereof, subject to an abbot, as a bishopric is to a bishop. Cowell. The rights and privileges of an abbot.

ABBEY. A monastery or nunnery for the use of an association of religious persons, having an abbot or abbess to preside over them.

ABBOT. A prelate in the 13th century who had had an immemorial right to sit in the national assembly. Taylor, Science of Jurispr. 287.

ABBOT, ABBAT. The spiritual superior or governor of an abbey. Feminine, *Abbess.*

ABBREVIATE OF ADJUDICATION. In Scotch law. An abstract of the decree of adjudication, and of the lands adjudged, with the amount of the debt. Adjudication is that diligence (execution) of the law by which the real estate of a debtor is adjudged to belong to his creditor in payment of a debt; and the abbreviate must be recorded in the register of adjudications.

ABBREVIATIO PLACITORUM. An abstract of ancient judicial records, prior to the Year Books. See Steph. Pl. (7th Ed.) 410.

ABBREVIATIONS. Shortened conventional expressions, employed as substitutes for names, phrases, dates, and the like, for the saving of space, of time in transcribing, etc. Abbott.

The abbreviations in common use in modern times consist of the initial letter or letters, syllable or syllables, of the word. Anciently, also, contracted forms of words, obtained by the omission of letters intermediate between the initial and final letters were much in use. These latter forms are now more commonly designated by the term *contraction.*

For Table of Abbreviations, see Appendix.

ABBREVIATIONUM ILLE NUMERUS ET SENSUS ACCIPIENDUS EST, UT CONCESSIO NON SIT INANIS. In abbreviations, such number and sense is to be taken that the grant be not made void. 9 Coke, 48.

ABBREVIATORS. In ecclesiastical law. Officers whose duty it is to assist in drawing up the Pope's briefs, and reducing petitions into proper form to be converted into papal bulls.

ABBROCHMENT, or ABBROACHMENT. The act of forestalling a market, by buying up at wholesale the merchandise intended to be sold there, for the purpose of selling it at retail. See Forestalling the Market.

ABBUTTALS. See Abuttals.

ABDICATION. The act of a sovereign in renouncing and relinquishing his government or throne, so that either the throne is left entirely vacant, or is filled by a successor appointed or elected beforehand.

Also, where a magistrate or person in office voluntarily renounces or gives it up before the time of service has expired.

The act of abdicating ; giving up of office, power or authority, right or trust; renunciation. McCormick v. Engstrom, 119 Kan. 698, 241 P. 685, 688.

Abdication of rights to property may constitute an assignment. In re Johnston's Estate, 186 Wis. 599, 203 N.W. 376, 377.

It differs from resignation, in that resignation is made by one who has received his office from another and restores it into his hands, as an inferior into the hands of a superior; abdication is the relinquishment of an office which has devolved by act of law. It is said to be a renunciation, quitting, and relinquishing, so as to have nothing further to do with, a thing, or the doing of such actions as are inconsistent with the holding of it. Chambers.

ABDITORIUM. An abditory or hiding place, to hide and preserve goods, plate or money. Jacob.

ABDUCTION. In criminal law. The offense of taking away a wife, child, or ward, by fraud and persuasion, or open violence. 3 Bl.Comm. 139-141; State v. Chisenhall, 106 N.C. 676, 11 S.E. 518 (female under 14) ; State v. Hopper, 186 N.C. 405, 119 S.E. 769, 772 (wife).

To take away surreptitiously by force in kidnapping. Doss v. State, 220 Ala. 30, 123 So. 231, 232, 68 A.L.R. 712.

The unlawful taking or detention of any female for purposes of marriage, concubinage, or prostitution. 4 Steph.Com. 84; People v. Crotty, 55 Hun, 611, 9 N.Y.S. 937. In many states this offense is created by statute and in most cases applies to females under a given age.

By statute in some states, abduction includes the withdrawal of a husband from his wife, as where another woman alienates his affection and entices him away and causes him to abandon his wife. Humphrey v. Pope, 122 Cal. 253, 54 P. 847.

ABEARANCE. Behavior; as a recognizance to be of good abearance signifies to be of good behavior. 4 Bl.Comm. 251, 256.

ABEREMURDER. (From Sax. *abere,* apparent, notorious; and *mord,* murder.) Plain or downright murder, as distinguished from the less heinous crime of manslaughter, or chance medley. Spelman; Cowell; Blount.

ABESSE. Lat. In the civil law. To be absent; to be away from a place. Said of a person who was *extra continentia urbis,* (beyond the suburbs of the city.)

ABET. A French word combined of two words "a" and ."beter"—to bait or excite an animal. It includes knowledge of the wrongful purpose of the perpetrator and counsel and encouragement in the crime. People v. Terman, 4 Cal.App.2d 345, 40 P.2d 915, 916.

To encourage, incite, or set another on to commit a crime. This word is always applied to aiding the commission of a crime. To abet another to commit a murder is to command, procure, or counsel him to commit it, Old Nat. Brev. 21; Co. Litt. 475; to command, procure, counsel, encourage, induce, or assist, Short v. Commonwealth, 240 Ky. 477, 42 S.W.2d 696, 697; to encourage, counsel, induce, or assist, State v. Watts, Nev., 296 P. 26. To facilitate the commission of a crime, promote its accomplishment, or help in advancing or bringing it about. State v. Lord, 42 N.M. 638, 84 P.2d 80, 86. It includes knowledge of wrongful purpose of perpetrator. Daniels v. State, 58 Ga.App. 599, 199 S.E. 572, 577. State v. Kneedy, 232 Iowa 21, 3 N.W.2d 611, 615. People v. Stein, 55 Cal.App.2d 417, 130 P.2d 750, 751 (permitting wife to remain in house of prostitution).

See Abettor; Aid and Abet.

"Aid" and "abet" are nearly synonymous terms as generally used; but, strictly speaking, the former term does not imply guilty knowledge or felonious intent, whereas the word "abet" includes knowledge of the wrongful purpose and counsel and encouragement in the commission of the crime. Forgery, People v. Dole, 122 Cal. 486, 55 P. 581, 68 Am.St.Rep. 50; Raiford v. State, 59 Ala. 106; Violation of law against free passes, State v. Ankrom, 86 W.Va. 570, 103 S.E. 925, 927; Crime against nature, State v. Start, 65 Or. 178, 132 P. 512, 513; Robbery, People v. Powers, 293 Ill. 600, 127 N.E. 681, 682.

Instigate synonymous (malicious prosecution) Hughes v. Van Bruggen, 44 N.M. 534, 105 P.2d 494, 499.

"Abet" smacks more of technical terminology than does the word "aid", but it is almost synonymous with the word "aid". Assault and battery, Gentry v. State, 65 Ga. App. 100, 15 S.E.2d 464, 465.

ABETTATOR. L. Lat. In old English law. An abettor. Fleta, lib. 2, c. 65, § 7. See Abettor.

ABETTOR. In criminal law. An instigator, or setter on; one who promotes or procures a crime to be committed. Old Nat.Brev. 21. One who commands, advises, instigates, or encourages another to commit a crime; a person who, being present or in the neighborhood, incites another to commit a crime, and thus becomes a principal. See State v. Baldwin, 193 N.C. 566, 137 S.E. 590, 591.

Must have rendered assistance or encouragement to the perpetrator of the crime with knowledge of his felonious intent; offense of "aiding and abetting" being committed by person present who does some act or speaks some word aiding the actual perpetrator of the crime. Combs v. Commonwealth, 224 Ky. 653, 6 S.W.2d 1082, 1083. Must

aid or commit some overt act or act of encouragement. Long v. Commonwealth, 288 Ky. 83, 155 S.W.2d 246, 247. One who so far participates in the commission of the offense as to be present for the purpose of assisting if necessary. State v. Epps, 213 N.C. 709, 197 S.E. 580, 583.

The distinction between abettors and accessories is the presence or absence at the commission of the crime. Cowell; Fleta, lib. 1, c. 34. Presence and participation are necessary to constitute a person an abettor. 4 Sharsw.Bla. Comm. 33; Bradley v. Commonwealth, 201 Ky. 413, 257 S. W. 11, 13. Common design to take life not necessary. State v. Lord, 42 N.M. 638, 84 P.2d 80, 86. Not essential that there should be a prearrangement or mutual understanding or concert of action. McKinney v. • Commonwealth, 284 Ky. 16, 143 S.W.2d 745, 747, 748.

ABEYANCE. In the law of estates. In expectation, remembrance, and contemplation of law; the condition of a freehold when there is no person in being in whom it is vested.

In such cases the freehold has been said to be *in nubibus* (in the clouds), McKown v. McKown, 93 W.Va. 689, 117 S.E. 557, 559; *in pendenti* (in suspension) ; and *in gremio legis* (in the bosom of the law). Where there *is* a tenant of the freehold, the remainder or reversion in fee may exist for a time without any particular owner, in which case it is said to be in abeyance; Lyle v. Richards, 9 S. & R. Pa. 367; 3 Plowd. 29 a, *b,* 35 a; 1 Washb.R.P. 47.

Franchise of a corporation; Trustees of Dartmouth College v. Woodward, 4 Wheat. (U. S.) 691, 4 L.Ed. 629. Personal property as in case of a vessel captured at sea from its captors until it becomes invested with the character of a prize; 1 Kent, 102; 1 C.Rob.Adm. 139; 3 *id.* 97, n.; or the rights of property of a bankrupt, pending adjudication; Bank v. Sherman, 101 U.S. 403, 25 L.Ed. 866.

A condition of being undetermined. Fenn v. American Rattan & Reed Mfg. Co., 75 Ind. App. 146, 130 N.E. 129, 130. (Seller stating its inability to promise to deliver.)

Sales to third parties, of property acquired by county at tax sale, being held in "abeyance", means that certain rights or conditions are in expectancy. Willard v. Ward County, 72 N.D. 291, 6 N.W.2d 566, 568.

ABIATICUS, or AVIATICUS. L. Lat. In feudal law. A son's son; a grandson in the male line. Du Cange, *Avius;* Spelman; Lib.Feud., Baraterii, tit. 8, cited Id.

ABIDE. To accept the consequences of ; to rest satisfied with; to wait for.

With reference to an order, judgment, or decree of a court, to perform, to execute. Jackson v. State, 30 Kan. 88, 1 P. 317. Where a statute provides for a recognizance "to *abide* the judgment of the court," one conditioned "to *await* the action of the court" is not sufficient; Wilson v. State, 7 Tex.App. 38. Defendant does not "abide the judgment" until costs of appeal are paid. Ex parte Tillery, 22 Ala.App. 193, 114 So. 15. And see State v. Gregory, 205 Iowa, 707, 216 N.W. 17, 19.

Defendant's presence in courtroom not a compliance with supersedeas bond conditioned to "abide final judgment," where there was no formal offer to surrender defendant into court's custody. American Surety Co. of New York v. State, 50 Ga.App. 777, 179 S.E. 407.

To abide and satisfy is used to express the execution or performance of a judgment or order by carrying it into complete effect, Erickson v. Elder, 34 Minn. 371, 25 N.W. 804, *Cf.* Woolfolk v. Jones, D.C.Va., 216 F. 807, 809.

Where costs are to abide final result, "abide" is synonymous with conform to. Getz v. Johnston, 145 Md. 426, 125 A. 689, 691.

To abide order respecting seized property, means to perform, obey, conform to. Cantor v. Sachs, 18 Del.Ch. 359, 162 A. 73, 84.

ABIDING BY. In Scotch law. A judicial declaration that the party abides by the deed on which he founds, in an action where the deed or writing is attacked as forged. Pat.Comp.. It has the effect of pledging the party to stand the consequences of founding on a forged deed. Bell.

"Abide by" means to adhere to, to submit to, to obey, to accept the consequences of. Detroit Fidelity & Surety Co. v. U. .S., C.C.A.Ohio, 36 F.2d 682, 683. (Recognizance)

To abide by an award means to await the award without revoking the submission. It does not mean to "acquiesce in" or "not dispute," in the sense of not being at liberty to contest the validity of the award when made, Hunt v. Wilson, 6 N.H. 36; Quimby v. Melvin, 35 N.H. 198; Weeks v. Trask, 81 Me. 127, 16 A. 413, 2 L.R.A. 532.

ABIDING CONVICTION. A definite conviction of guilt derived from a thorough examination of the whole case. Hopt v. Utah, 7 S.Ct. 614, 120 U.S. 439, 30 L.Ed. 708. A settled or fixed conviction. Davis v. State, 8 Ala.App. 147, 62 So. 1027, 1033. People v. Castro, 68 Cal.App.2d 491, 157 P.2d 25, 30.

ABIDING FAITH. Belief or confidence in the guilt of one accused of crime which remains or continues in the minds of the jury. Gray v. State. 56 Okl.Cr. 208, 38 P.2d 967, 970.

ABIGEATORES. See Abigeus.

ABIGEATUS. Lat. In the civil law. The offense of stealing or driving away cattle. See Abigeus.

ABIGEI. See Abigeus.

ABIGERE. Lat. In the civil law. To drive away. Applied to those who drove away animals with the intention of stealing them. Applied, also, to the similar offense of cattle stealing on the borders between England and Scotland. See Abigeus.

To drive out; to expel by force; to produce abortion. Dig. 47, 11, 4.

ABIGEUS. Lat. (P1., *abigei,* or more rarely *abigeatores.)* In the civil law. A stealer of cattle; one who drove or drew away *(subtraxit)* cattle from their pastures, as horses or oxen from the herds, and made booty of them, and who followed this as a business or trade.

The term was applied also to those who drove away the smaller animals, as swine, sheep, and goats. In the latter case, it depended on the number taken, whether the offender was *fur* (a common thief) or *abigeus.* But the taking of a single horse or ox seems to have constituted the crime of *abigeatus.* And those who frequently did this were clearly *abigei,* though they took but an animal or two at a time. Dig. 47, 14, 3, 2. See Cod. 9, 37; Nov. 22, c. 15, § 1; 4 Bl.Comm. 239.

ABILITY. When the word is used instatutes, it is usually construed as referring to pecuniary ability, as in the construction of Tenterden's Act *(q.* v.) ; 1 M. & W. 101.

Contemplates earning capacity as well as property actually owned, to support abandoned wife; State v. Witham, 70 Wis. 473, 35 N.W. 934, Contra, Washburn v. Washburn, 9 Cal. 475.

The ability to buy, required in a purchaser as a condition to the broker's right to a commission, *is* the financial

ability to meet the required terms of the sale, and does not mean solvency or ability to respond in damages for a breach of the contract. Stewart v. Sisk, 29 Ga.App. 17, 114 S.E. 71. See Able to Purchase.

A voter's "ability to read" within meaning of election statutes is satisfied if he can read in a reasonably intelligent manner sentences composed of words in common use and of average difficulty, although each word may not be always accurately pronounced, and "ability to write" is satisfied if he can by use of alphabetical signs express in a fairly legible way words of common use and average difficulty, though each word may not be accurately spelled. Williams v. Hays, 175 Ky. 170, 193 S.W. 1046, 1047. But the mere ability to write one's name and post office address, and nothing more, is insufficient. Murrel v. Allen, 180 *Ky.* 604, 203 S.W. 313, 314.

ABISHERING, or ABISHERSING. Quit of amercements. It originally signified a forfeiture or amercement, and is more properly *mishering, mishersing,* or *miskering,* according to Spelman. It has since been termed a liberty of freedom, because, wherever this word is used in a grant, the persons to whom the grant is made have the forfeitures and amercements of all others, and are themselves free from the control of any within their fee. Termes de la Ley, 7.

ABJUDICATIO. In old English law. The depriving of a thing by the judgment of a court; a putting out of court; the same as *forisjudicatio,* forjudgment, forjudger. Co.Litt. 100a, b; Townsh. Pl. 49. A removal from court. Calvinus, Lex.

Used to indicate an adverse decision in a writ of right: Thus, the land is said to be *abjudged* from one of the parties and his heirs. 2 Poll. & Maitl. 62.

ABJURATION. A renunciation or abandonment by or upon oath.

The oath by which any person holding office in England was formerly obliged to bind himself not to acknowledge any right in the Pretender to the throne of England; 1 Bla.Com. 368; 13 and 14 W. III, c. 6, repealed by 30 and 31 Vic. c. 59.

It also denotes an oath abjuring certain doctrines of the church of Rome.

ABJURATION OF ALLEGIANCE. A naturalized citizen of the United States, must declare that he doth renounce and *abjure* all allegiance and fidelity which he owes to any foreign prince, state, etc. 8 U.S.C.A. § 735.

ABJURATION OF THE REALM. In ancient English law. A renunciation of one's country, a species of self-imposed banishment, under an oath never to return to the kingdom unless by permission. 4 Bl.Comm. 332; Avery v. Everett, 110 N.Y. 317, 18 N.E. 148, 1 L.R.A. 264. See Abjure.

ABJURE. To renounce, or abandon, by or upon oath. See Abjuration.

A departure from the state without the intention of returning, and not a renunciation of one's country, upon an oath of perpetual banishment, as the term originally implied. Mead v. Hughes, 15 Ala. 148, 1 Am.Rep. 123.

ABLE-BODIED. As used in a statute relating to service in the militia, this term does not imply an absolute freedom from all physical ailment. It imports an absence of those palpable and visible defects which evidently incapacitate the person from performing the ordinary duties of a soldier. Darling v. Bowen, 10 Vt. 152. Ability to perform ordinary labor is not the test. Town of Marlborough v. Sisson, 26 Conn. 57.

ABLE SEAMAN. A grade of merchant seamen. 46 U.S.C.A. § 672.

ABLE TO EARN. The phrase in the Workmen's Compensation Act in reference to wages does not mean the maximum sum earned in any one week, but a fair average of the weekly wages which an employee is able to earn covering a sufficient period of time to determine his earning capacity. Reeves v. Dietz, 1 La.App. 501, 505. See also, Mt. Olive & Staunton Coal Co. v. Industrial Commission, 301 Ill. 521, 134 N.E. 16. Amount one is capable of earning if employed. Ferrara v. Clifton Wright Hat Co., 125 Conn. 140, 3 A.2d 842, 843.

Ability to obtain and hold employment means that the person referred to is either able or unable to perform the usual duties of whatever employment may be under consideration, in the manner that such duties are customarily performed by the average person engaged in such employment. Kinyon v. Kinyon, 230 Mo.App. 623, 71 S.W.2d 78, 82.

ABLE TO PURCHASE "Ability" in sales contracts, dependent on ability to purchase, usually means financial ability. Anderson v. Craig, 111 Mont. 182, 108 P.2d 205, 206; House v. Hornburg, Sup., 39 N.Y.S.2d 20, 22. Purchaser must have financial ability and legal capacity to acquire land. Campbell v. Hood, Tex.Com.App., 35 S.W.2d 93, 95, 85 A.L.R. 266.

Purchaser is able to purchase, as respects broker's right to commission, if he is financially able to command the necessary funds to close the deal within the time required. Hersh v. Garau, 218 Cal. 460, 23 P.2d 1022. Even though part of the money must be obtained on the purchased property itself. Pellaton v. Brunski, 69 Cal. App. 301, 231 P. 583, 584. But see Bateman v. Richard, 105 Okl. 272, 232 P. 443, 445; and Reynor v. Mackrill, 181 Iowa 210, 164 N.W. 335, 1 A.L.R. 523, holding that a person, to be able to purchase, must have the money for the cash payment, and not merely property on which he could raise it. See, also, Peters v. Mullins, 211 Ky. 123, 277 S.W. 316, 317. See Financially Able.

ABLEGATI. Papal ambassadors of the second rank, who are sent to a country where there is not a nuncio, with a less extensive commission than that of a nuncio. This title is equivalent to envoy.

ABLOCATIO. A letting out to hire, or leasing for money. Calvin. Sometimes used in the English form "ablocation."

ABMATERTERA. Lat. In the civil law. A great-great-grandmother's sister, *(abavice soror).* Inst. 3, 6, 6; Dig. 38, 10, 3. Called *matertera maxima.* Id. 38, 10, 10, 17. Called, by Bracton, *abmatertera magna.* Bract. fol. 68b.

ABNEPOS. Lat. A great-great-grandson. The grandson of a grandson or granddaughter. Calvinus, Lex.

ABNEPTIS. Lat. A great-great-granddaughter. The granddaughter of a grandson or granddaughter. Calvinus, Lex.

ABODE. One's home; habitation; place of dwelling; or residence. Ordinarily means "domicile." Hanson v. Williams, 170 Ga. 779, 154 S.E. 240, 242. Living place impermanent in character. Fowler v. Fowler, 156 Fla. 316, 22 So.2d 817, 818. Evans v. Evans, 141 Fla. 860, 194 So. 215, 217. The place where a person dwells. Dorsey v. Brigham, 177 Ill. 250, 52 N.E. 303, In re Erickson, 18 N.J.Misc. 5, 10 A.2d 142, 146.

Residence of a legal voter. Fry's Election Case, 71 Pa. 302, 10 Am.Rep. 698; Dale v. Irwin, 78 Ill. 181; Pope v. Board of Election Com'rs, 370 Ill. 196, 18 N.E.2d 214, 216. Fixed place of residence for the time being. Augustus Co, for Use of Bourgeois v. Manzella, 19 N.J.Misc. 29, 17 A.2d 68, 70; Hudson v. Birmingham Water Works Co., 238 Ala. 38, 189 So. 72, 73. For service of process, one's fixed place of residence for the time being. State ex rel. Merritt v. Heffernan, 142 Fla. 496, 195 So. 145, 147; Kurilla v. Roth, 132 N.J.L. 213, 38 A.2d 862, 864.

ABOGADO. Sp. An advocate. See Bozero,

ABOLISH. To do away with wholly; to annul. Webster. To dispense with. Alexander v. City of Lampasas, Tex.Civ.App., 275 S.W. 614, 616. Put an end to. Stretch v. Murphy, 166 Or. 439, 112 P. 2d 1018, 1021.

Imports absolute destruction, having its root in the Latin word "abolere," meaning to destroy utterly. Applies particularly to things of a permanent nature, such as institutions, usages, customs, as the abolition of slavery. Pondelick v. Passaic County, 111 N.J.Law 187, 168 A. 146, 147.

ABOLITION. The destruction, annihilation, abrogation, or extinguishment of anything. Peterson v. Pratt, 183 Iowa 462, 167 N.W. 101. Also the leave given by the sovereign or judges to a criminal accuser to desist from further prosecution. 25 Hen. VIII, c. 21.

In the Civil, French and German law, abolition is used nearly synonymously with pardon, remission, grace. Dig. 39, 4, 3, 3. There is, however, this difference : *grace* is the generic term; *pardon,* according to those laws, is the clemency which the prince extends to a man who has participated in a crime, without being a principal or accomplice; *remission* is made in cases of involuntary homicides, and self-defence. *Abolition* is used when the crime cannot be remitted. The prince then may, by letters of abolition, remit the punishment, but the infamy remains, unless letters of abolition have been obtained before sentence. *Encycl. de D'Alembert.*

Abolition of position or office, Rexstrew v. City of Huntington Park, Cal.App., 120 P.2d 136, 142. Positions of physicians and dentists, Lewin v. La Guardia, 22 N.Y.S.2d 409, 411, 175 Misc. 165. Lay-off of court attendant, Pondelick *v.* Passaic County, 111 N.J.L. 187, 168 A. 146, 147. Transfer not an abolition of office, Tremp v. Patten, 132 Conn. 120, 42 A.2d 834, 837.

ABORDAGE. Fr. In French commercial law. Collision of vessels.

ABORTIFACIENT. In medical jurisprudence. A drug or medicine capable of, or used for, producing abortion.

ABORTION. The expulsion of the fcetus at a period of utero-gestation so early that it has not acquired the power of sustaining an independent life. The unlawful destruction, or the bringing forth prematurely, of the human foetus before the natural time of birth; State of Magnell, 51 A. 606, 3 Pennewill (Del.) 307. The act of bringing forth what is yet imperfect. Also the thing prematurely brought forth, or product of an untimely process. Sometimes loosely used for the offense of procuring a premature delivery; but strictly, the early delivering is the abortion; causing or procuring abortion is the full name of the offense. Wells v. New England Mut. L. Ins. Co., 191 Pa. 207, 43 A. 126, 53 L.R.A. 327.

Criminal miscarriage, Commonwealth v. Sierakowski, 154 Pa.Super. 321, 35 A.2d 790, 792; Mississippi State Board of Health v. Johnson, 197 Miss. 417, 19 So.2d 445, 448. "Abortion" and a "miscarriage produced by unlawful means" are synonymous, People v. Luckett, 23 Ca1.App.2d 539, 73 P.2d 658, 659.

ABORTIONIST. One who criminally produces abortions, or one who follows business or practices of crime of producing abortions. State v. Guaraneri, 59 R.I. 173, 194 A. 589, 592, 593.

ABORTIVE TRIAL. A term descriptive of the result when a case has gone off, and no verdict has been pronounced, without the fault, contrivance, or management of the parties. Jebb & B. 51.

ABORTUS. Lat. The fruit of an abortion; the child born before its time, incapable of life.

ABOUT. Near in time, quantity, number, quality, or degree. Substantially, approximately, almost, or nearly. Odom v. Langston, 351 Mo. 609, 173 S.W.2d 826, 829. Testimony as to speed, Casto v. Hansen, 123 Or. 20, 261 P. 428, 429. Near, period of gestation of still born child, Life & Casualty Ins. Co. v. Walters, 190 Miss. 761, 198 So. 746, 748; Todd v. City of New York, City Ct., N.Y. 23 N.Y.S.2d 884, 888. Carrying burglar's tools in suitcase, Trousdale v. State, 168 Tenn. 210, 76 S.W. 2d 646, 647. Near the time. State ex rel. Nagle v. Leader Co., 97 Mont. 586, 37 P.2d 561, 564.

When used with reference to time, the term is of flexible significance, varying with the circumstances and the connection in which it is employed. Burlington Grocery Co. v. Heaphy's Estate, 98 Vt. 122, 126 A. 525, 528. But its use does not necessarily render time immaterial, nor make a contract one terminable at will. Costello v. Siems-Carey Co., 140 Minn. 208, 167 N.W. 551, 552. In a charter party, "about to sail" means just ready to sail. [1893] 2 Q.B. 274. And when it is said that one is "about" to board a street car, it means "in the act of." Fox *v.* Denver City Tramway Co., 57 Colo. 511, 143 P. 278, 280. With relation to quantity, the term suggests only an estimate of probable amount. Barkemeyer Grain & Seed Co. v. Hannant, 66 Mont. 120, 213 P. 208, 210. Its import is that the actual quantity is a near approximation to that mentioned, and it has the effect of providing against accidental variations. Norrington v. Wright, 6 S.Ct. 12, 115 U.S. 188, 29 L. Ed. 366. It may be given practically the same effect as the phrase more or less. Pierce v. Miller, 107 Neb. 851, 187 N.W. 105, 107; Cargo under vessel charter, Steamship Co. of 1912 v. C. H. Pearson & Son Hardwood Co., C.C.A. N.Y., 30 F.2d 770, 773. Contract for sale of electric energy, Merced Irr. Dist. v. San Joaquin Light & Power Corporation, 101 Cal.App. 153, 281 P. 415, 417. In a deed covers some slight or unimportant inaccuracy. Parrow v. Proulx, 111 Vt. 274, 15 A.2d 835, 838. Synonymous with "on" or "upon," as in offense of carrying concealed weapons. State v. Brunson, 162 La. 902, 111 So. 321, 323; Carriage of a pistol or revolver in a grip, satchel, or hand bag held in

the hand or connected with the person, State v. Blazovitch, 88 W.Va. 612, 107 S.E. 291, or on the running board of an automobile, Armstrong v. State, 98 Tex.Cr.R. 335, 265 S.W. 701. Paulk v. State, 97 Tex.Cr.R. 415, 261 S. W. 779, 780. Near by, close at hand, convenient of access. Welch v. State, 97 Tex.Cr.R. 617, 262 S.W. 485; Brown v. U. S., 30 F.2d 474, 475, 58 App.D.C. 311. Weapon on shelf immediately behind defendant, who was seated in coupe type automobile. Hampton v. Commonwealth, 257 Ky. 626, 78 S.W.2d 748, 750. As to number, it merely implies an estimate of a particular lot or class and not a warranty. Holland v. Rock, 50 Nev. 340, 259 P. 415. In connection with distance or locality, the term is of relative significance, varying with the circumstances. Parker v. Town of Pittsfield, 88 Vt. 155, 92 A. 24, 26. Employee on an elevator is "about the premises". Lienau v. Northwestern Telephone Exch. Co., 151 Minn. 258, 186 N.W. 945, 946. Workman 200 feet from a factory was "about" the factory. Wise v. Central Dairy Co., 121 Kan. 258, 246 P. 501, 503. An automobile mechanic injured 17 ½ blocks from the employers' shop while making a road test of an automobile is not injured on, in, or about the employers' place of business. Iott v. Mosby, 126 Kan. 294, 268 P. 109. "About" in lease meaning in other parts of building. William A. Doe Co. v. City of Boston, 262 Mass. 458, 160 N.E. 262. Estimate of distance, Picharella v. Ovens Transfer Co., 135 Pa.Super. 112, 5 A.2d 408, 409. Estimate as to time, charter of vessel, Britain S. S. Co. v. Munson S. S. Line. D.C. N.Y., 25 F.2d 868, 869. Instruction regarding specified date, State v. Loahmann, Mo., 58 S.W.2d 309, 311. Courses and distances, Humble Oil & Refining Co. v. Luther, Tex. Civ.App., 40 S.W.2d 865, 867. Pistol under automobile seat. Commonwealth v. Nunnelley, 56 S.W.2d 689, 247 Ky. 109, 88 A.L.R. 805.

ABOUTISSEMENT. Fr. An abuttal or abutment. See Guyot, Repert. Univ. *"Aboutissans."*

ABOVE. Higher; superior. As, court above, plaintiff or defendant above. *Above all incumbrances* means in excess thereof ; Williams v. McDonald, 42 N.J.Eq. 395, 7 A. 886. Principal; as distinguished from what is auxiliary or instrumental. 3 Bl.Comm. 291.

Bail to the action, or special bail, is otherwise termed bail *above.* 3 Bl.Comm. 291. Jurisdiction "above" the jurisdiction of justices of the peace. Synonymous with "without." Atlantic Coast Line R. Co. v. Nellwood Lumber Co., 21 Ga.App. 209, 94 S.E. 86, 87. Above high water means above a tide which might reasonably be expected to recur with some degree of frequency. Banks v. Wilmington Terminal Co., Del.Super., 24 A.2d 592, 598, 599, 601, 602, 2 Terry 489.

ABOVE CITED, or MENTIONED. Quoted before. A figurative expression taken from the ancient manner of writing books on scrolls, where whatever is mentioned or cited before in the same roll must be *above.* Encyc. Lond.

ABPATRUUS. Lat. A great-great-uncle; or, a great-great-grandfather's brother (a bavi *frater).* Inst. 3, 6, 6; Dig. 38, 10, 3; Du Cange, Patruus. Called by Bracton and Fleta, *abpatruus magnus.* Bract. fol. 68b; Fleta, lib. 6, c. 2, § 17. It sometimes means uncle, and sometimes great-uncle.

ABRIDGE. To reduce or contract; usually spoken of written language.

Copyright Law

To epitomize; to reduce; to contract. It implies preserving the substance, the essence, of a work, in language suited to such a purpose. In making extracts there is no condensation of the author's language, and hence no• abridgment. To abridge requires the exercise of the mind; it is not copying. Between a compilation and an abridgment there is a clear distinction. A compilation consists of selected extracts from different authors; an abridgment is a condensation of the views of one author. Story v. Holcombe, 4 McLean, 306, 310, Fed.Cas.No.13,497.

Practice

To shorten a declaration or count by taking away or severing some of the substance of it. Brooke, Abr., Com., Dig. *Abridgment;* 1 Viner, Abr. 109. See Abridgment.

ABRIDGMENT. Condensation; contraction. An epitome or compendium of another and larger work, wherein the principal ideas of the larger work are summarily contained.

Abridgments of the law are brief digests of the law, arranged alphabetically. (1 Steph.Comm. 51.) The term "digest" has now supplanted that of "abridgment." Sweet.

ABRIDGMENT OF DAMAGES. The right of the court to reduce the damages in certain cases. *Vide* Brooke, tit. "Abridgment."

ABROAD. In English chancery law, beyond the seas.

ABROGATE. To annul, repeal, or destroy; to annul or repeal an order or rule issued by a subordinate authority; to repeal a former law by legislative act, or by usage.

ABROGATION. The destruction or annulling of a former law, by an act of the legislative power, by constitutional authority, or by usage.

It stands opposed to *rogation;* and is distinguished from *derogation,* which implies the taking away only some part of a law; from *subrogation,* which denotes the adding a clause to it; from *dispensation,* which only sets it aside in a particular instance; and from *antiquation,* which is the refusing to pass a law. Encyc. Lond. Implied abrogation takes place when the new law contains provisions which are positively contrary to former laws, without expressly abrogating such laws. Bernard v. Vignaud, 10 Mart.O.S. La. 560; and also when the order of things for which the law has been made no longer exists. See Ex parte Lum Poy, D.C., 23 F.2d 690.

For "Express Abrogation," see that title.

ABSCOND. To go in a clandestine manner out of the jurisdiction of the courts, or to lie concealed, in order to avoid their process. Malvin .v. Christoph, 54 Iowa, 562, 7 N.W. 6. To hide, conceal, or absent oneself clandestinely, with the intent to avoid legal process. Smith v. Johnson, 43 Neb. 754, 62 N.W. 217. Postponing limitations. Keck v. Pickens, 207 Ark. 757, 182 S.W.2d 873, 875. Fleeing from arresting or prosecuting officers of this state. Code Cr.Proc. art. 8. State v. Berryhill, 188 La. 549, 177 So. 663.

ABSCONDING DEBTOR. One who absconds from his creditors.

An absconding debtor is one who lives without the state, or who has intentionally concealed himself from his creditors, or withdrawn himself from the reach of their suits, with intent to frustrate their just demands. Thus, if a person departs from his usual residence, or remains absent therefrom, or conceals himself in his house, so that he can-

not be served with process, with intent unlawfully to delay or defraud his creditors, he is an absconding debtor; but if he departs from the state or from his usual abode, with the intention of again returning, and without any fraudulent design, he has not absconded, nor absented himself, within the intendment of the law. Doughnut Corporation of America v. Tsakirides, 121 N.J.L. 136, 1 A.2d 467, 469. A party may abscond, and subject himself to the operation of the attachment law against absconding debtors, without leaving the limits of the state. Field v. Adreon, 7 Md. 209. A debtor who is shut up from his creditors in his own house is an absconding debtor. Ives v. Curtiss, 2 Root (Conn.) 133. Salzman v. Robinson, 10 N.J.Misc.R. 51, 157 A. 547, 548.

ABSENCE. The state of being absent, removed, or away from one's domicile, or usual place of residence. Maley v. Pennsylvania R. Co., 258 Pa. 73, 101 A. 911. Not present at particular time, opposite of appearance at a specified time. Hamilton v. Bernstein, 133 Kan. 229, 299 P. 581.

Absence is of a fivefold kind: (1) A *necessary absence,* as in banished or transported persons ; this is entirely necessary. (2) *Necessary and voluntary,* as upon the account of the commonwealth, or in the service of the church. (3)

A *probable absence,* according to the civilians, as that of students on the score of study. (4) *Entirely voluntary,* on account of trade, merchandise, and the like. (5) *Absence cum dolo et culpd,* as not appearing to a writ, *subpoena,* citation, etc., or to delay or defeat creditors, or avoiding arrest, either on civil or criminal process. Ayliffe. Nonappearance to action, not merely that the party was not present in court vacating judgment. Strine v. Kaufman, 12 Neb. 423, 11 N.W. 867. In usual and natural signification, means physical absence. Inhabitants of Lanesborough v. Inhabitants of Ludlow, 250 Mass. 99, 145 N.E. 57, 58. Nonpresence, of official for service. Kurre v. American Indemnity Co. of Galveston, Tex., 223 Mo.App. 406, 17 S.W.2d 685, 688.

Presumption of Death Created

Intent to establish home at place last heard from not required. American Nat. Ins. Co. v. Garcia, Tex.Civ.App., 46 S.W.2d 1011, 1012. Away from a place to which one is expected to return. Woodmen of the World Life Ins. Soc. v. Cooper, Tex.Civ.App., 164 S.W.2d 729, 731.

In Scotch Law, want or default of appearance. A•decree is said to be *in absence* where the defender (defendant) does not appear. Ersk. Inst. bk. 4, tit. 3, § 6.

ABSENT. Being away from; at a distance from; not in company with.

Paine v. Drew, 44 N.H. 306, where it was held that the word when used as an adjective referred only to the condition or situation of the person or thing spoken of at the time of speaking without reference to any prior condition or situation of the same person or thing, but when used as a verb implies prior presence. It has also been held to mean "not being in a particular place at the time referred to," and *not* to import prior presence. The term *absent defendants* does not embrace non-resident defendants but has reference to parties resident in the state, but temporarily absent therefrom. Wheeler v. Wheeler, 35 Ill. App. 123. See, however, Selmer v. James Dickinson Farm Mortg. Co., D.C.I11., 299 F. 651, 658, holding that a foreign corporation is "absent" from the state, and limitation does not run in its favor. Commonwealth's attorney is "absent" when disqualified or disabled from performing functions of office. Northcutt *v.* Howard, 279 Ky. 219, 130 S.W.2d 70, 71, 72. A judge, disqualified to act. Dark Tobacco Growers' Co-op. Ass'n v. Wilson, 206 Ky. 550, 267 S.W. 1092, 1093. A deceased stockholder employee is not "absent" from duty, as respects sharing of profits, etc. Nichols v. Olympia Veneer Co., 135 Wash. 8, 236 P. 794, 796. Nonresident with office in state is not absent from state. Corash v. Texas Co., 35 N.Y.S.2d 334, 340, 264 App.Div. 292.

As a verb, "absent" means to take or withdraw to such a distance as to prevent intercourse; to depart from. People v. Day, 321 Ill. 552, 152 N.E. 495, 497.

ABSENT-MINDEDNESS. A state of mind in which the person affected fails to respond to the ordinary demands on his attention. Webster. See Racine Tire Co. v. Grady, 205 Ala. 423, 88 So. 337.

ABSENTE, Lat. Being absent; often used in the old reports of one of the judges not present at the hearing of a cause. 2 Mod. 14. *Absente Reo,* The defendant being absent.

ABSENTEE. One who dwells abroad; a landlord who resides in a country other than that from which he draws his rents. McCul. Pol. Econ.; 33 Brit. Quar. Rev. 455. One who is absent from his usual place of residence or domicile.

Foreign corporations, not filing declarations of domicile and names of agents. Palmer v. Avalon Oil Co., 10 La. App. 512, 120 So. 781, 782. In Louisiana law, one who has left his residence in a state leaving no one to represent him. Bartlett v. Wheeler, 31 La.Ann. 540; or who resides in another state but has property in Louisiana. Penn v. Evans, 28 La.Ann. 576. It has been also defined as one who has never been domiciled in the state and -who resides abroad. Morris *v.* Bienvenu, 30 La.Ann. 878. One person cannot be both,' at the same time, in the meaning of 1 he law, a resident and an absentee. Spence v. Spence, 105 So. 23, 29, 158 La. 961.

ABSENTEES, or DES ABSENTEES. A parliament so called was held at Dublin, 10th May, 8 Hen. VIII. It is mentioned in letters patent 29 Hen. VIII.

ABSENTEM ACCIPERE DEBEMUS EUM QUI NON EST EO LOCI IN QUO PETITUR. We ought to consider him absent who is not in the place where he is demanded (or sought). Dig. 50, 16, 199.

ABSENTIA EJUS QUI REIPUBLIC1E CAUSA ABEST, NEQUE EI NEQUE ALII DAMNOSA ESSE DEBET. The absence of him who is away in behalf of the republic (on business of the state) ought not to be prejudicial either to him or to another. Dig. 50, 17, 140.

ABSOILE, ASSOIL, ASSOILE. To pardon; to deliver from excommunication. Staunford, Pl.Cr. 72; Kelham; Cowell.

ABSOLUTA SENTENTIA EXPOSITORE NON INDIGET. An absolute sentence or proposition (one that is plain without any scruple, or absolute without any saving) needs not an expositor. 2 Inst. 533.

ABSOLUTE. Complete; perfect; final; without any condition or incumbrance; as an absolute bond *(simplex obligaiio)* in distinction from a conditional bond. Unconditional; complete and perfect in itself ; without relation to or dependence on other things or persons. Instruction as to an "absolute" gift, Ketch v. Smith, 131 Okl. 263, 268 P. 715, 717. Irrevocable, final. Gift inter vivos by husband, President and Directors of Manhattan Co. v. Janowitz, 14 N.Y.S.2d 375, 382, 172 Misc. 290. Within limitation or restriction, Comford v. Cantrell, 177 Tenn. 553, 151 S.W.2d 1076, 1077.

An absolute estate is one that is free from all manner of condition or incumbrance; an estate in fee simple. Johnson v. McIntosh, 8 Wheat. 543, 5 L.Ed. 681; Fuller v. Missroon, 35 S.C. 31.4, 14 S.E. 714; Bradford v. Martin, 199 Iowa 250, 201 N.W. 574, 576; Middleton v. Dudding, Mo. Sup., 183 S.W. 443, 444.- A rule is said to be absolute when on the hearing it is confirmed and made final. A conveyance is said to be absolute, as distinguished from a mortgage or other conditional conveyance. Gogarn v. Connors. 153 N.W. 1068, 188 Mich. 161. Absolute property is where a man hath solely and exclusively the right and also the occupation of movable chattels ; distinguished from a qualified property, as that of a bailee. 2 Kent 347. An absolute owner is one in whom elements of titles of possession, right of possession, and right of property, are combined. Harris v. Southeast Portland Lumber Co., 123 Or. 549, 262 P. 243, 244. Absolute ownership exists when interest is so completely vested in insured that he cannot be deprived of it without his own consent. Norwich Union Fire Ins. Soc. v. Sawyer, 57 Ga.App. 739, 196 S.E. 223, 224. Absolute rights are such as appertain and belong to particular persons merely as individuals or single persons, as distinguished from relative rights, which are incident to them as members of society; 1 Sharsw.Bla.Com. 123; 1 Chit.Pr. 32. An absolute duty is one that is free from every restriction; unconditional; determined; not merely provisional; irrevocable. Broken telephone wires. Home Telephone Co. v. Weir, 101 N.E.1020, 1021, 53 Ind. App. 466; Railroad employee, Lehigh Valley R. Co. v. Beltz, C.C.A.N.Y., 10 F.2d 74, 77; Pedestrians, Scibilia v. City of Philadelphia, 279 Pa. 549, 124 A. 273, 275, 32 A.L.R. 981. An "absolute power of disposition," in the absence of statute, would be one by which the holder of the power might dispose of the property as fully and in the same manner as he might dispose of his individual estate acquired by his own efforts. In re Briggs' Will, 167 N.Y.S. 632, 635, 101 Misc. 191. In the law of insurance that is an *absolute interest* in property which is so completely vested in the individual that there could be no danger of his being deprived of it without his own consent. Libby Lumber Co. v. Pacific States Fire Ins. Co., 79 Mont. 166, 255 P. 340, 345, 60 A.L.R. 1. It may be used in the sense of vested. Hough v. Ins. Co., 29 Conn. 20, 76 Am.Dec. 581. *"Absolute control"* in Motor Vehicle Act does not require instant stoppage. Goff v. Clarksburg Dairy Co., 86 W.Va. 237, 103 S.E. 58, 60. As to absolute control of a mine, see People v. Boggess, 75 Cal.App. 499, 243 P. 478, 481; and of an estate, see Strickland v. Strickland, 271 Ill. 614, 111 N.E. 592, 594. Absolute veto is equivalent to "pocket veto". Okanogan, Methow, San Poelis (or San Poil), Nespelem, Colville, and Lake Indian Tribes or Bands of State of Washington v. United States, 49 S.Ct. 463, 279 U.S. 655, 73 L.Ed. 894, 64 A.L.R. 1434.

As to absolute "Conveyance," "Covenant," "Delivery," "Divorce," "Estate," "Gift," "Guaranty," "Interest," "Legacy," "Nuisance," "Nullity," "Obligation," "Property," "Rights," "Rule," "Sale," "Title," "Warrandice," see those titles.

ABSOLUTE LAW. The true and proper law of nature, immutable in the abstract or in principle, in theory, but not in application; for very often the object, the reason, situation, and other circumstances, may vary its exercise and obligation. 1 Steph.Comm. 21 *et seq.*

ABSOLUTELY. Completely; wholly; without qualification; without reference or relation to, or dependence upon, any other person, thing, or event. Thus, *absolutely void* means utterly void; Pearsoll v. Chapin, 44 Pa. 9. *Absolutely necessary* may be used to make the idea of necessity more emphatic; State v. Tetrick, 34 W.Va. 137, 11 S.E. 1002. An "absolutely necessary repair," within terms of Wisconsin St. 1925, § 85.02, prohibiting parking of vehicles except for making absolutely necessary repairs, includes repair of a punctured tire. Long v. Steffen, 194 Wis. 179, 215 N.W. 892, 893, 61 A.L.R. 1155. Independently or unconditionally, wholly or positively. Collins v. Hartford Accident & Indemnity Co., 178 Va. 501, 17 S.E.2d 413, 418.

"Absolutely void" is that which the law or nature of things forbids to be enforced at all, and that is "relatively void" which the law condemns as a wrong to individuals and refuses to enforce against them. Kyle v. Chaves, 42 N.Mex. 21, 74 P.2d 1030; Scudder v. Hart, 45 N.M. 76, 110 P.2d 536, 541.

A devise of property to have "absolutely" means without condition, exception, restriction, qualification or limitation, In re Darr's Estate, 206 N.W. 2, 3, 114 Neb. 116, and creates a fee-simple estate. In re Reynold's Estate, 94 Vt. 149, 109 A. 60, 63.

ABSOLUTION. In Canon Law, a juridical act whereby the clergy declare that the sins of such as are penitent are remitted. Among Protestants it is chiefly used for a sentence by which a person who stands excommunicated is released or freed from that punishment. Encyc. Brit.

In the Civil Law a sentence whereby a party accused is declared innocent of the crime laid to his charge.

In French Law, the dismissal of an accusation.

The term *acquitment is* employed when the accused is declared not guilty, and *absolution* when he is recognized as guilty but the act is not punishable by law or he is exonerated by some defect of intention or will. Merlin, Report.

ABSOLUTISM. In politics. A system of government in which public power is vested in some person or persons, unchecked and uncontrolled by any law, institution, constitutional device, or coordinate body.

ABSOLVE. To set free, or release, as from obligation, debt, or responsibility. State ex rel. St. Louis Car Co. v. Hughes, 348 Mo. 125, 152 S'.W.2d 193, 194.

ABSOLVITOR. In Scotch law. An acquittal; a decree in favor of the defender in any action.

ABSQUE. Without. Occurs in phrases taken from the Latin; such as those immediately following.

ABSQUE ALIQUO INDE REDENDO. Lat. Without reserving any rent therefrom; without rendering anything therefrom. A term used of a free grant by the crown. 2 Rolle, Abr. 502.

ABSQUE CONSIDERATIONE CURVE. In old practice. Without the consideration of the court; without judgment. Fleta, lib. 2, c. 47, § 13.

ABSQUE HOC. Without this. These are technical words of denial, used in pleading at common law by way of special traverse, to introduce the negative part of the plea, following the affirmative part or inducement. Martin v. Hammon, 8 Pa. 270. See, also, Traverse.

ABSQUE I1%IPETITIONE VASTI. Without impeachment of waste; without accountability for waste; without liability to suit for waste. A clause anciently often inserted in leases (as the

equivalent English phrase sometimes is) signifying that the tenant or lessee shall not be liable to suit *(impetitio)* or challenged, or called to account, for committing waste. Co. Litt. 220a; Litt. § 352. See Waste.

ABSQUE TALI CAUSA. Lat. Without such cause. A form of replication, now obsolete, in an action *ex delicto* which works a general denial of the whole matter of the defendant's plea of *de injuria*. Gould, Pl. c. 7, § 10; Steph. Pl. 191.

ABSTENTION. In French law. Keeping an heir from possession; also tacit renunciation of a succession by an heir. Merl. Repert.

ABSTRACT, n. A less quantity containing the virtue and force of a greater quantity; an abridgment. Miller v. Kansas City Light & Power Co., C.C.A.Mo., 13 F.2d 723. A transcript is generally defined as a copy, and is more comprehensive than an abstract. Harrison- v. Mfg. Co., 10 S.C. 278, 283. Summary or epitome, or that which comprises or concentrates in itself the essential qualities of a larger thing or of several things. Robbins Inv. Co. v. Robbins, 49 Cal.App. 2d 446, 122 P.2d 91, 92.

ABSTRACT, v. To take or withdraw from; as, tO abstract the funds of a bank. Sprague v. State, 188 Wis. 432, 206 N.W. 69, 70.

ABSTRACT OF A FINE. In old conveyancing. One of the parts of a fine, being an abstract of the writ of covenant, and the concord, naming the parties, the parcels of land, and the agreement. 2 Bl.Comm. 351. More commonly called the "note" of the fine. See Fine; Concord.

ABSTRACT OF RECORD. A complete history in short, abbreviated form of the case as found in the record, complete enough to show that the questions presented for review have been properly reserved. State ex rel. Wallace State Bank v. Trimble, 308 Mo. 278, 272 S.W. 72, 73. Synopsis or summary of facts, rather than table of contents of transcript. Wing v. Brasher, 59 Mont. 10, 194 P. 1106, 1108. Abbreviated accurate and authentic history of proceedings. Brown v. Reichmann, 237 Mo.App. 136, 164 S.W.2d 201, 207.

ABSTRACT OF TITLE. A condensed history of the title to land, consisting of a synopsis or summary of the material or operative portion of all the conveyances, of whatever kind or nature, which in any manner affect said land, or any estate or interest therein, together with _a statement of all liens, charges, or liabilities to which the same may be subject, and of which it is in any way material for purchasers to be apprised. War[y]. Abst. § 2. Stevenson v. Polk, 71 Iowa, 278, 32 N.W. 340.

Record title, not extrinsic evidence thereof. Upton v. Smith, 166 N.W. 268, 183 Iowa 588. Showing a marketable title. Morgan v. W. A. Howard Realty Co., 68 Colo. 414, 191 P. 114, 115. An epitome of the record evidence of title. De Huy v. Osborne, 96 Fla. 435, 118 So. 161, 162. Including maps, plats, and other aids. Commissioners' Court of Madison County v. Wallace, 118 Tex. 279, 15 S.W.2d 535, 536. An epitome of the conveyances, transfers, and other facts relied on as evidence of title, together with all such facts appearing of record as may impair the title. State ex rel. Freeman v. Abstracters Board of Examiners, 99 Mont. 564, 45 P.2d 668, 670. Vangsness v. Bovill, 58 S.D. 228, 235 N.W. 601, 604. Memorandum or concise statement in orderly form of the substance of documents or facts appearing on public records which affect title to real property. State ex rel. Doria v. Ferguson, 145 Ohio St. 12, 60 N.E.2d 476, 478.

ABSTRACT QUESTION. One which does not rest upon existing facts or rights. Morris Plan Bank of Fort Worth v. Ogden, Tex.Civ.App., 144 S.W.2d 998, 1004.

ABSTRACTION. Taking from with intent to injure or defraud, "wrongful abstraction" is "unauthorized and illegal taking or withdrawing of funds, etc., and appropriation thereof to taker's benefit." Pacific Coast Adjustment Bureau v. Indemnity Ins. Co. of North America, 115 Cal. App. 583, 2 P.2d 218, 219.

For benefit of taker or of another with his consent. Austin v. Nieman, Tex.Civ.App., 3 S.W.2d 128, 129. Offense for bank officer, popular sense of word. Commonwealth v. Dauphinee, 121 Pa.Super. 565, 183 A. 807, 813. Under the National Bank Act, not necessarily the same as embezzlement, larceny, or misapplication of funds. Ferguson v. State, 80 Tex.Cr.R. 383, 189 S.W. 271, 273. State v. Hudson, 93 W.Va. 435, 117 S.E. 122, 126.

ABSURDITY. That which is both physically and morally impossible; and that is to be regarded as morally impossible which is contrary to reason, so that it could not be imputed to a man in his right senses. State v. Hayes, 81 Mo. 574, 585. Anything which is so irrational, unnatural, or inconvenient that it cannot be supposed to have been within the intention of men of ordinary intelligence and discretion. Black, Interp. Laws, 104; Graves v. Scales, 172 N.C. 915, 90 S.E. 439; obviously and flatly opposed to the manifest truth; inconsistent with the plain dictates of common sense; logically contradictory; nonsensical; ridiculous. Wade v. Empire Dist. Electric Co., 98 Kan. 366, 158 P. 28, 30.

ABUNDANS CAUTELA NON NOCET. Abundant or extreme caution does no harm. 11 Co. 6; Fleta, lib. 1, c. 28, § 1; 6 Wheat. 108. This principle is generally applied to the construction of instruments in which superfluous words have been inserted more clearly to express the intention.

ABUS DE CONFIANCE. Fraudulently misusing or spending to anybody's prejudice goods, cash, bills, documents, or contracts handed over for a special object. The Washington, D.C.N.Y., 19 F. Supp. 719, 722.

ABUSE, n. Everything which is contrary to good order established by usage. Merl. Repent. Departure from use; immoderate or improper use.

Action that would be necessary in ordinary affairs to, make one guilty of an "abuse" connotes conduct of a different grade than what is meant when a court is said to have "abused its discretion." Beck v. Wings Field, Inc. C.C.A.Pa., 122 F.2d 114, 116.

Civil Law

The destruction of the substance of a thing in using it. See Abuse, v.

Corporate Franchise or Entity

The abuse or misuse of its franchises by a corporation signifies any positive act in violation of the charter and in derogation of public right, willfully done or caused to be done; the use of rights or franchises as a pretext for wrongs and injuries to the public. People v. Atlantic Ave. R. Co., 125 N.Y. 513, 26 N.E. 622.

Discretion

"Abuse of discretion" is synonymous with a failure to exercise a sound, reasonable, and legal discretion. Disbarment, Adair v. Pennewill, 153 A. 859, 860, 4 W.W.Harr.(Del.) 390. It is a strict legal term indicating that appellate court is simply of opinion that there was commission of an error of law in the circumstances. Refusing motion to amend pleadings, Tunstall v. Lerner Shops, 160 S.C. 557, 159 S.E. 386. Motions to consolidate actions, Bishop v. Bishop, 164 S.C. 493, 162 S.E. 756, 757. Vacating judgment, Detroit Fidelity & Surety Co. v. Foster, 171 S.C. 121, 169 S.E. 871, 881. And it does not imply intentional wrong or bad faith, or misconduct, nor any reflection on the judge but means the clearly erroneous conclusion and judgment—one is that clearly against logic and effect of such facts as are presented in support of the application or against the reasonable and probable deductions to be drawn from the facts disclosed upon the hearing; an improvident exercise of discretion; an error of law. New trial, State v. Draper, 83 Utah, 115, 27 P.2d 39. Setting aside of decree pro confesso. Ex parte Jones, 246 Ala. 433, 20 So.2d 859, 862.

A discretion exercised to an end or purpose not justified by and clearly against reason and evidence. Trimmer v. State, 142 Okl. 278, 286 P. 783, 786; Seaba v. State, 290 P. 1098, 1101, 144 Okl. 295. Unreasonable departure from considered precedents and settled judicial custom, constituting error of law. Beck v. Wings Field, Inc., C.C.A. Pa., 122 F.2d 114, 116, 117. The term is commonly employed to justify an interference by a higher court with the exercise of discretionary power by a lower court and is said by some authorities to imply not merely error of judgment, but perversity of will, passion, prejudice, partiality, or moral delinquency. The exercise of an honest judgment, however erroneous it may appear to be, is not an abuse of discretion. Stroup *v.* Raymond, 183 Pa. 279, 38 A. 626. Where a court does not exercise a discretion in the sense of being discreet, circumspect, prudent, and exercising cautious judgment, it is an abuse of discretion. State Board of Medical Examiners v. Spears, 79 Colo. 588, 247 P. 563, 565. Difference in judicial opinion is not synonymous with "abuse of judicial discretion" as respects setting aside verdict as against evidence. Belock v. State Mut. Fire Ins. Co., 106 Vt. 435, 175 A. .19, 22.

Distress

The using an animal or chattel distrained, which makes the distrainer liable as for a conversion.

Female Child

An injury to the genital organs in an attempt at carnal knowledge, falling short of actual penetration. Lee v. State, 246 Ala. 69, 18 So.2d 706, 707. But, according to other authorities, "abuse" is here equivalent to ravishment or rape. Palin v. State, 38 Neb. 862, 57 N.W. 743. Physical abuse. Montgomery v. State, 28 Ala.App. 442, 186 So. 589, 592.

Process

There is said to be an abuse of process when an adversary, through the malicious and unfounded use of some regular legal proceeding, obtains some advantage over his opponent. Wharton. Employment of process for doing an act clearly outside authority conveyed by express terms of writ. Shane v. Gulf Refining Co., 114 Pa.Super. 87, 173 A. 738, 740.

The gist of an action for "abuse of process" is improper use or perversion of process after it has been issued. Publix Drug Co. v. Breyer Ice Cream Co., 347 Pa. 346, 32 A.2d 413, 415. Holding of accused incommunicado before complying with warrant requiring accused to be taken before magistrate. People v. Crabb, 372 Ill. 347, 24 N.E.2d 46, 49. Warrant of arrest to coerce debtor. In re Williams, 233 Mo.App. 1174, 128 S.W.2d 1098, 1105. A malicious abuse of legal process occurs where the party employs it for some unlawful object, not the purpose which it is intended by the law to effect; in other words, a perversion of it. Lauzon v. Charroux, 18 R.I. 467, 28 A. 975. Vybiral v. Schildhauer, 265 N.W. 241, 244, 130 Neb. 433; Silverman v. Ufa Eastern Division Distribution, 236 N.Y.S. 18, 20, 135 Misc. 814. Thus, where the purpose of a prosecution for issuance of a check without funds was to collect a debt, the prosecution constituted an abuse of criminal process. Hotel Supply Co. v. Reid, 16 Ala.App. 563, 80 So. 137, 138. Regular and legitimate use of process, although with a bad intention, is not a malicious "abuse of process." Priest v. Union Agency, 174 Tenn. 304, 125 S. W.2d 142, 143. Action for "abuse of process" is distinguished from action for "malicious prosecution," in that action for abuse of process rests upon improper use of regularly issued process, while "malicious prosecution" has reference to wrong in issuance of process. Clikos v. Long, 231 Ala. 424, 165 So. 394, 396; McInnis v. Atlantic Inv. Corporation, 137 Or. 648, 4 P.2d 314, 315; Lobel v. Trade Bank of New York, 229 N.Y.S. 778, 781, 132 Misc. 643.

ABUSE, v. To make excessive or improper use of a thing, or to employ it in a manner contrary to the natural or legal rules for its use; to make an extravagant or excessive use, as to abuse one's authority.

In the civil law, the borrower of a chattel which, in its nature, cannot be used without consuming it. such as wine or grain, is said to abuse the thing borrowed if he uses it. It has been held to include misuse; Erie & North-East R. Co. v. Casey, 26 Pa. 287; to signify to injure, diminish in value, or wear away by improper use; *id.;* to be synonymous with injure; Dawkins v. State, 58 Ala. 376, 29 Am. Rep. 754.

ABUSIVE. Tending to deceive; practicing abuse; prone to ill treat by coarse, insulting words. U. S. v. Ault, D.C.Wash., 263 F. 800, 810. Using ill treatment, injurious, improper, hurtful, offensive, reproachful. People on Complaint of Wilson v. Sinclair, 149 N.Y.S. 54, 56, 86 Misc. 426.

ABUT. To reach, to touch. In old law, the ends were said to abut, the sides to adjoin. Cro. Jac. 184. And see Lawrence v. Killam, 11 Kan. 499, 511; Springfield v. Green, 120 Ill. 269, 11 N.E. 261. To take a new direction; as where a bounding line changes its course. Spelman, Gloss. *Abuttare.* To touch at the end; be contiguous; join at a border or boundary; terminate; to end at; to border on; to reach or touch with an end. Assessment of property, Hensler v. City of Anacortes, 140 Wash. 184, 248 P. 406, 407. The term "abutting" implies a closer proximity than the term "adjacent." Reversion of vacated park land,

City of Hutchinson v. Danley, 88 Kan. 437, 129 P. 163, 164. "Contiguous" synonymous, both conveying idea that lot borders on improvement. Reynard v. City of Caldwell, 55 Idaho 342, 42 P.2d 292, 296.

No intervening land. Johnson v. Town of Watertown, 131 Conn. 84, 38 A.2d 1, 4. Property at end of street sought to be vacated. Messinger v. City of Cincinnati, 36 Ohio App. 337, 173 N.E. 260, 262. Widen street, leaving ftee access to paved street, property within assessment statutes. Goodman v. City of Birmingham, 223 Ala. 199, 135 So. 336, 337. Though the usual meaning of the word is that the things spoken of do actually adjoin, "bounding and abutting" have nc, such inflexible meaning as to require lots assessed actually to touch the improvement; Cohen v. Cleveland, 43 Ohio St. 190, 1 N.E. 589.

ABUTMENTS. The walls of a bridge adjoining the land which support the end of the roadway and sustain the arches. The ends of a bridge, or those parts of it which touch the land. Board of Chosen Freeholders of Sussex County v. Strader, 18 N.J.Law, 108, 35 Am.Dec. 530. Support at either extreme end. City of New York v. New York Cent. R. Co., 48 N.Y.S.2d 189, 191, 183 Misc. 104.

ABUTTALS. Fr. The buttings or boundings of lands, showing to what other lands, highways, or places they belong or are abutting. Termes de la Ley; Cowell; Toml. It has been used to express the end boundary lines as distinguished from those on the sides, as "buttais and sidings"; Cro.Jac. 183.

ABUTTER. One whose property abuts, is contiguous, or joins at a border or boundary, as where no other land, road, or street intervenes.

ABUTTING OWNER. An owner of land which abuts or adjoins. The term usually implies that the relative parts actually adjoin, but is sometimes loosely used without implying more than close proximity. See Abut.

Where five-foot strip between property assessed for paving and street was conveyed to city but not used for street purposes, property assessed held not "abutting property," Davidson v. Salt Lake City, 81 Utah 203, 17 P.2d 234, 237. Property owners held "abutting property owners," subject to sewer assessment, notwithstanding street was widened from 40 to 50 feet when incorporated in state highway, and city bought the extra 5 feet on either side. Carey-Reed Co. v. Sisco, 251 Ky. 22, 64 S.W.2d 430, 433. Railroad in street was not "abutting owner". Town of Lenoir v. Carolina & N. W. Ry. Co., 194 N.C. 710, 140 S.E. 618, 619.

AC ETIAM. (Lat. And also.) The introduction of the statement of the real cause of action, used in those cases where it was necessary to allege a fictitious cause of action to give the court jurisdiction, and also the real cause in compliance with the statutes. It is sometimes written *acetiam.* 2 Stra. 922. See Bill of Middlesex under Bill, definition 2.

AC ETIAM BILLIE. And also to a bill. See Ac Etiam.

AC SI. (Lat. As if.) Townsh. P1. 23, 27. These words frequently occur in old English statutes. Lord Bacon expounds their meaning in the statute of uses: "The statute gives entry, not *simpliciter,* but with an ac si." Bac. Read. Uses, Works, iv. 195.

ACADEME. Place of academic study. Sisters of Mercy v. Town of Hooksett, 93 N.H. 301, 42 A.2d 222, 225.

ACADEMY. An institution of learning. An association of experts in some particular branch of art, literature, or science.

In its original meaning, an association formed for mutual improvement, or for the advancement of science or art; in later use, a species of educational institution, of a grade between the common school and the college. Academy of Fine Arts v. Philadelphia County, 22 Pa. 496; School holding rank between college and common school, U. S. ex rel. Jacovides v. Day, C.C.A.N.Y., 32 F.2d 542, 544; Sisters of Mercy v. Town of Hooksett, 93 N.H. 301, 42 A.2d 222, 225. See School.

ACAPTE, In French feudal law. A species of relief; a seignorial right due on every change of a tenant. A feudal right which formerly prevailed in Languedoc and Guyenne, being attached to that species of heritable estates which were granted on the contract of *emphyteusis.* Guyot, Inst. Feod. c. 5, § 12.

ACCEDAS AD CURIAM. (Lat. That you go to court.) An original writ out of chancery directed to the sheriff, for the purpose of removing a replevin suit from a Court Baron or a hundred court to one of the superior courts of law. It directs the sheriff *to go to the lower court,* and enroll the proceedings and send up the record. See Fitzh. Nat. Brev. 18; Dy. 169; 3 Bl. Comm. 34.

ACCEDAS AD VICE COMITEM. L. Lat. (You go to the sheriff.) A writ formerly directed to the coroners of a county in England, commanding them to go to the sheriff, where the latter had suppressed and neglected to return a writ of *pone,* and to deliver a writ to him requiring him to return it. Reg. Orig. 83. See Pone.

ACCELERATION. The shortening of the time for the vesting in possession of an expectant interest. Wharton. Hastening of the enjoyment of an estate which was otherwise postponed to a later period. Blackwell v. Virginia Trust *Co., 177* Va. 299, 14 S.E.2d 301, 304.

If the life estate fails for any reason, the remainder is "accelerated". Elliott v. Brintlinger, 376 III. 147, 33 N.E. 2d 199, 201, 133 A.L.R. 1364. The word is also used in reference to contracts for payment of money in what is usually called an "acceleration clause" by which the time for payment of the debt is hastened or advanced because of breach of some condition such as failure to pay interest when due, McCormick v. Daggett, 162 Ark. 16, 257 S.W. 358; insolvency of the maker, Wright v. Seaboard Steel & Manganese Corporation, C.C.A.N.Y., 272 F. 807; or failure to keep mortgaged premises insured, Porter v. Schroll, 93 Kan. 297, 144 P. 216.

ACCEPT. To receive with approval or satisfaction; to receive with intent to retain. See Morris v. State, 102 Ark. 513, 145 S.W. 213, 214. Also, in the capacity of drawee of a bill, to recognize the draft, and engage to pay it when due. It is not

equivalent to "acquiesce." Applett v. Empire Inv. Co., 99 Or. 533, 194 P. 461, 462. Admit and agree to; accede to or consent to; receive with approval; adopt; agree to. Rocha v. Hulen, 6 Cal.App.2d 245, 44 P.2d 478, 482, 483. Street committee's and city engineer's reports. City of Morehead v. Blair, 243 Ky. 84, 47 S.W.2d 741, 742. Means something more than to receive, meaning to adopt, to agree to carry out provisions. Assignee of lease, Pickier v. Mershon, 212 Iowa, 447, 236 N.W. 382, 385; Central State Bank v. Herrick, 214 Iowa 379, 240 N.W. 242, 246. Renewal health and accident policy premiums, Prescott v. Mutual Ben. Health and Accident Ass'n, Fla., 183 So. 311, 314, 119 A.L.R. 525.

ACCEPTANCE. The taking and receiving of anything in good part, and as it were a tacit agreement to a preceding act, which might have been defeated or avoided if such acceptance had not been made. Brooke, Abr. The act of a person to whom a thing is offered or tendered by another, whereby he receives the thing with the intention of retaining it, such intention being evidenced by a sufficient act. JEtna Inv. Corporation v. Chandler Landscape & Floral Co., 227 Mo.App. 17, 50 S.W.2d 195, 197.

The exercise of power conferred by an offer by performance of some act. In re Larney's Estate, 266 N.Y.S. 564, 148 Misc. 871.

### Bills of Exchange

An engagement to pay the bill in money when due. 4 East 72; Hunt v. Security State Bank, 91 Or. 362, 179 P. 248, 251.

The act by which the person on whom a bill of exchange is drawn (called the "drawee") assents to the request of the drawer to pay it, or, in other words, engages, or makes himself liable, to pay it when due. Bell-Wayland Co. v. Bank of Sugden, 95 Okl. 67, 218 P. 705. It may be by parol or in writing, and either general or special, absolute or conditional; and it may be impliedly, as well as expressly, given. 3 Kent, Comm. 83, 85; Story, Bills, §§ 238, 251. Telegram directing drawer to draw draft. Hoffer v. Eastland Nat. Bank, Tex.Civ.App., 169 S.W.2d 275, 278. Certification at request of the payee or holder. Welch v. Bank of Manhattan Co., 35 N.Y.S.2d 894, 895, 264 App.Div. 906. But the usual and regular mode of acceptance is by the drawee's writing across the face of the bill the word "accepted," and subscribing his name; after which he is termed the *acceptor*. Story, Bills, § 243.

### Contracts

Compliance by offeree with terms and conditions of offer would constitute an "acceptance". Davis & Clanton v. C. I. T. Corporation, 190 S.C. 151, 2 S.E.2d 382, 383.

Qualifications or conditions make a "counteroffer," not an "acceptance." Cohn v. Penn Beverage Co., 313 Pa. 349, 169 A. 768, 769. Bullock v. McKeon, 104 Cal.App. 72, 285 P. 392, 395.

### Deed

Act by which vendee vests himself with title to the property. Hardin v. Kazee, 238 Ky. 526, 38 S.W.2d 438.

### Insurance

In a contract of insurance, the "acceptance" occurs when insurer agrees to accept application and to issue policy. Acacia Mut. Life Ass'n v. Berry, 54 Ariz. 208, 94 P.2d 770, 772. Delay or inaction on the part of an insurer cannot constitute an "acceptance". French American Banking Corporation v. Fireman's Fund Ins. Co., D.C.N.Y., 43 F.Supp. 494, 498. More than mere mental resolution or determination on part of insurer to accept application. Must be communicated to applicant. Limbaugh v. Monarch Life Ins. Co., Springfield, Mass., Mo.App., 84 S.W.2d 208, 212.

### Marine Insurance

The acceptance of an abandonment by the underwriter is his assent, either express or to be implied from the surrounding circumstances, to the sufficiency and regularity of the abandonment. Rap. & Law.

### Sales

An acceptance implies, not only tha physical fact of receiving the goods, but also the intention of retaining them. Illinois Fuel Co. v. Mobile & 0. R. Co., 319 Mo. 899, 8 S.W.2d 834, 841.

Retaining and using goods. Ohio Electric Co. v. Wisconsin-Minnesota Light & Power Co., 161 Wis. 632, 155 N. W. 112, 113. Pressure tanks, Dunck Tank Works v. Sutherland, 236 Wis. 83, 294 N.W. 510, 513. Coal stokers used for 15 months before request for removal, United States v. Lux Laundry Co., C.C.A.Ind., 118 F.2d 848, 849. Where goods are expressly rejected, receipt does not mean acceptance. State Board of Administration v. Roquemore, 218 Ala. 120, 117 So. 757, 760. The acceptance of goods sold under a contract which would be void by the statute of frauds without delivery and acceptance involves something more than the act of the vendor in the delivery. It requires that the vendee should also act, and that his act should be of such a nature as to indicate that he receives and accepts the goods delivered as his property. He must receive and retain the articles delivered, intending thereby to assume the title to them, to constitute the acceptance mentioned in the statute. Rodgers v. Phillips, 40 N.Y. 524. See, also, Snow v. Warner, 10 Mete. (Mass.) 132, 43 Am. Dec. 417. There must be some unequivocal act, with intent to take possession as owner. Vacuum Ash & Soot Conveyor Co. v. Huyler's, 101 N.J.Law, 147, 127 A. 203, 204. Title and possession must be in unrestricted control of buyer so as not to permit of recall or rescission. Mellen Produce Co. v. Fink, 225 Wis. 90, 273 N.W. 538. Mere words are insvfficient to establish "delivery and receipt." Mellen Produce Co. v. Fink, 225 Wis. 90, 273 N.W. 538, 542.

The following are the principal varieties of acceptances :

*Absolute.* An express and positive agreement to pay the bill according to its tenor.

*Conditional.* An engagement to pay the bill on the happening of a condition. Todd v. Bank of Kentucky, 3 Bush, (Ky.) 628. A "conditional acceptance" is in effect a statement that the offeree is willing to enter into a bargain differing in some respects from that proposed in the original offer. The conditional acceptance is, therefore, itself a counter offer. Hoskins v. Michener, 33 Idaho, 681, 197 P. 724. Morris F. Fox & Co. v. Lisman, 208 Wis. 1, 237 N.W. 267, 271. Worley v. Holding Corporation, 348 Ill. 420, 181 N.E. 307, 309.

*Express.* An undertaking in direct and express terms to pay the bill; an absolute acceptance.

*Implied.* An undertaking to pay the bill inferred from acts of the drawee of a character which fairly warrant such an inference. In case of a bilateral contract, "acceptance" of an offer need not be expressed, but may be shown by any words or acts indicating the offeree's assent to the

proposed bargain. Prescott v. Mutual Ben. Health and Accident Ass' n, 133 Fla. 510, 183 So. 311, 315, 119 A.L.R. 525. Frederick Raff Co. v. Murphy, 110 Conn. 234, 147 A. 709, 711. Tenant for several months continued to occupy storeroom and paid rentals, C. R. Anthony Co. v. Stroud, 189 Oki. 104, 114 P.2d 177, 178. Landlord's reletting leased premises after default in rent, In re Lear Shoe Co., Sup., 22 N.Y.S.2d 778, 782. Taking possession, exercise of ownership and dominion and failure to complain to seller, Bell v. Main, D.C.Pa., 49 F.Supp. 689, 692.

*Partial.* An acceptance varying from the tenor of the bill. An acceptance to pay part of the amount for which the bill is drawn, 1 Strange 214, or to pay at a different time, 14 Jur. 806; Hatcher v. Stolworth, 25 Miss. 376; or at a different place, 4 M. & S. 462, would be partial. For some examples of what do and what do not constitute conditional acceptances, see Heaverin v. Donnell, 7 Smedes & M. (Miss.) 245, 45 Am.Dec. 302; Campbell v. Pettengill, 7 Greenl. (Me.) 126, 20 Am.Dec. 349; Ensign v. Clark Bros. Cutlery Co., 195 Mo.App. 584, 193 S. W. 961, 962. Provisions respecting cutting of timber etc. on optioned land, did not destroy the "acceptance". Bastian v. United States, C. C.A.Ohio, 118 F.2d 777, 779. Would be in named place for purpose of entering into option, Ackerman v. Carpenter, 113 Vt. 77, 29 A.2d 922, 925. Counter proposition to option. Tholl Oil Co. v. Miller, 197 La. 976, 3 So.2d 97, 98. Conditional, qualified acceptance, Moore Bros. *v.* Kirkpatrick, Tex.Civ.App., 172 S.W.2d 135, 137.

*Qualified.* One either conditional or partial, and which introduces a variation in the sum, time, mode, or place of payment.

*Supra protest.* An acceptance by a third person, after protest of the bill for non-acceptance by the drawee, to save the honor of the drawer or some particular indorser. A. general acceptance is an absolute acceptance precisely in conformity with the tenor of the bill itself, and not qualified by any statement, condition, or change. Todd v. Bank of Kentucky, 3 Bush (Ky.) 628. A special acceptance is the qualified acceptance of a bill of exchange, as where it is accepted as payable at a particular place "and not elsewhere." Rowe v. Young, 2 Brod. & B. 180. See Trade Acceptance.

ACCEPTANCE AU BESOIN. Fr, In French law. Acceptance in case of need; an acceptance by one on whom a bill is drawn au *besoin,* that is, in case of refusal or failure of the drawee to accept. Story, Bills, §§ 65, 254, 255.

ACCEPTARE,

Civil Law

Lat. To accept; to assent; to assent to a promise made by another. Gro. de J. B. lib. 2, c. 11, § 14.

Pleading

To accept. *Acceptavit,* he accepted. 2 Strange, 817. *Non acceptavit,* he did not accept. 4 Man. & G. 7.

ACCEPTEUR PAR INTERVENTION. In French law. Acceptor of a bill for honor.

ACCEPTILATION. In the civil and Scotch law. A release made by a creditor to his debtor of his debt, without receiving any consideration. Ayl. Pand. tit. 26, p. 570. It is a species of donation, but not subject to the forms of the latter, and is valid unless in fraud of creditors. Merl. Repert.

The verbal extinction of a verbal contract, with a declaration that the debt has been paid when it has not; or the acceptance of something merely imaginary in satisfaction of a verbal contract. Sanders' Just. Inst. (5th Ed.) 386.

ACCEPTOR. The person who accepts a bill of exchange, (generally the drawee,) or who engages to be primarily responsible for its payment. Nissenbaum v. State, 38 Ga.App. 253, 143 S.E. 776, 777.

ACCEPTOR SUPRA PROTEST. One who accepts a bill which has been protested, for the honor of the drawer or any one of the indorsers.

ACCESS. Approach; or the means, power, or opportunity of approaching. Sometimes importing the occurrence of sexual intercourse, Jackson v. Jackson, 182 Okl. 74, 76 P.2d 1062, 1066; otherwise as importing opportunity of communication for that purpose as between husband and wife.

In real property law, the term "access" denotes the right vested in the owner of land which adjoins a road or other highway to go and return from his own land to the highway without obstruction. Cobb *v.* Commissioners of Lincoln Park, 202 Ill. 427, 67 N.E. 5, G, 8. "Access" to property does not necessarily carry with it possession. People v. Brenneauer, 166 N.Y.S. 801, 806, 101 Misc. 156. A deed, however, which conveys land and "also the right of access to the adjoining park and use of spring on same," may be deemed to convey not merely the right to pass through the park in order to reach the spring, but to convey a right of entry into the pail( as a park and by implication, the right to the use and enjoyment of the park. Goetz *v.* Knoxville Power & Light Co., 154 Tenn. 545, 290 S. W. 409, 414.

The right of "access" as applied to a private wharf on public lands merely means that there may not be built an obstruction separating the lands from the navigable highway. City of Oakland v. Hogan, 41 Cal.App.2d 333, 106 P. 2d 987, 995.

The right of "access to public records" includes not only a legal right of access but a reasonable opportunity to avail oneself of the same. American Surety Co. of New York v. Sandberg, D.C.Wash., 225 F. 150, 155.

Canon Law

The right to some benefice at some future time.

ACCESS (EASEMENT OF). An "easement of access" is the right which an abutting owner has of ingress to and egress from his premises, in addition to the public easement in the street. State Highway Board v. Baxter, 167 Ga. 124, 144 S.E. 796, 800; Lang v. Smith, 113 Pa.Super. 559, 173 A. 682, 683. "Access to an underground sewer" means more than a right to open the surface to make repairs, and implies the right of connection by branches. Heyman v. Biggs, 150 N.Y.S. 246, 247, 164 App.Div. 430.

ACCESSARY. See Accessory.

ACCESSIO. In Roman law. An increase or addition; that which lies next to a thing, and is supplementary and necessary to the principal thing; that which arises or is produced from the principal thing; an "accessory obligation" *(q. v.).* Calvinus, Lex. Jurid.

One of the modes of acquiring property, being the extension of ownership over that which grows from, or is united to, an article which one already possesses. Mather v. Chapman, 40 Conn. 382, 397, 16 Am.Rep. 46.

*Accessio* includes both accession and accretion as used in the common law. See Adjunctio.

ACCESSION. Coming into possession of a right or office; increase; augmentation; addition.

The right to all which one's own property produces, whether that property be movable or immovable; and the right to that which is united to it by accession, either naturally or artificially. 2 Kent, 360; 2 Bl.Comm. 404; Franklin Service Stations v. Sterling Motor Truck Co. of N. E., 50 R. I. 336, 147 A. 754, 755.

Riparian owners' right to abandoned river beds and rights of alluvion by accretion and reliction, Manry v. Robison, 122 Tex. 213, 56 S.W.2d 438, 443, 444.

A principle derived from the civil law, by which the owner of property becomes entitled to all which it produces, and to all that is added or united to it, either naturally or artificially, (that is, by the labor or skill of another.) even where such addition extends to a change of form or materials; and by which, on the other hand, the possessor of property becomes entitled to it, as against the original owner, where the addition made to it by his skill and labor is of greater value than the property itself, or where the change effected in its form is so great as to render it impossible to restore it to its original shape. Twin City Motor Co. v. Rouzer Motor Co., 197 N.C. 371, 148 S.E. 461, 463. In Blackwood Tire & Vulcanizing Co. v. Auto Storage Co., 133 Tenn. 515, 182 S. W. 576, L.R.A.1916E, 254, Ann.Cas.1917C, 1168, this principle was applied in favor of the conditional seller who, on nonpayment, retook the automobile sold, together with tire casings which the buyer had fitted thereto. Valley Chevrolet Co. v. 0. S. Stapley Co., 50 Ariz. 417, 72 P.2d 945.

International Law

The absolute or conditional acceptance by one or several states of a treaty already concluded between other sovereignties. Merl. Rêpert. It may be of two kinds: *First,* the formal entrance of a third state into a treaty so that such state becomes a party to it; and this can only be with the consent of the original parties. *Second,* a state may accede to a treaty between other states solely for the purpose of guarantee, in which case, though a party, it is affected by the treaty only as a guarantor. 1 Oppenheim, Int.L. sec. 532. See Adhesion.

Also, the commencement or inauguration of a sovereign's reign.

ACCESSION, DEED OF. In Scotch law. A deed executed by the creditors of a bankrupt or insolvent debtor, by which they approve of a trust given by their debtor for the general behoof, and bind themselves to concur in the plans proposed for extricating his affairs. Bell, Diet.

ACCESSORIUM NON DUCIT, SED SEQUITUR SUUM PRINCIPALE, Co. Litt. 152a, 389a. That which is the accessory or incident does not lead, but follows, its principal.

ACCESSORIUS SEQUITUR NATURAM SUI PRINCIPALIS. An accessary follows the nature of his principal. 3 Inst. 139. One who is accessary to a crime cannot be guilty of a higher degree of crime than his principal.

ACCESSORY. Anything which is joined to another thing as an ornament, or to render it more perfect, or which accompanies it, or is connected with it, as an incident, or as subordinate to it, or which belongs to or with it; for example, the halter of a horse, the frame of a picture, the keys of a house.

Adjunct or accompaniment. Louis Werner Saw Mill Co. v. White, 205 La. 242, 17 So.2d 264, 270.

A sale of land carried with it the standing timber as an "accessory." Woollums v. Hewitt, 142 La. 597, 77 So. 295, 296.

Automobile Accessories

Articles primarily adapted for use in motor vehicles, under revenue acts. Universal Battery Co. v. U. *S.*, Ct.C1., 50 S.Ct. 422, 423, 281 U.S. 580, 74 L.Ed. 1051.

Criminal Law

Contributing to or aiding in the commission of a crime. One who, without being present at the commission of a felonious offense, becomes guilty of such offense, not as a chief actor, but as a participator, as by command, advice, instigation, or concealment; either before or after the fact or commission; a *particeps criminis.* 4 Bl.Comm. 35; Cowell.

One who is not the chief actor in the offense, nor present at its perfornlance. but in some way concerned therein, either *before* or *after* the act committed. State v. Thomas, 136 A. 475, 477, 105 Conn. 757. One who aids and abets another. People v. Smith, 260 N.W. 911, 271 Mich. 553. Commands or counsels another. United States v. Peoni, C.C.A.N.Y., 100 F.2d 401, 402.

An "accessory" to a crime is always an "accomplice." People v. Ah Gee, 37 Cal.App. 1, 174 P. 371, 373. In certain crimes, there can be no accessories; all who are concerned are principals. These are (according to many authorities) treason, and all offenses below the degree of felony: 4 Bla.Comm. 35; Com. v. McAtee, 8 Dana (Ky.) 28; Williams v. State, 12 Smedes & M. (Miss.) 58.

Accessory Before the Fact

One who, being absent at the time a crime is committed, yet assists, procures, counsels, incites, induces, encourages, engages, or commands another to commit it. 4 Steph, Comm. 90, note n. People v. Owen, 241 *Mich.* 111, 216 N.W. 434. United States v. Pritchard, D.C.S.C., 55 F.Supp. 201, .203; rape, Clayton v. State, 244 Ala. 10, 13 So.2d 420, 422.

Murder, Wells v. State, 94 Ga. 70, 20 S.E.2d 580, 582. Distilling, State v. Lackmann, Mo., 12 S.W. 2d 424, 425.

Accessory During the Fact

One who stands by without interfering or giving such help as may be in his power to prevent the commission of a criminal offense. Farrell v. People, 8 Colo.App. 524, 46 P. 841.

Accessory After the Fact

One who, having full knowledge that a crime has been committed, conceals it from the magistrate, and harbors, assists, or protects the person charged with, or convicted of, the crime. Vernon's Ann.C.C.P. art. 53.

All persons who, after the commission of any felony, conceal or aid the offender, with knowledge that he has committed a felony, and with intent that he may avoid or escape from arrest, trial, conviction, or punishment, are accessories.

Comp.Laws N.D.1913, § 9219; Rev.Code S.D.1919, § 3595.

An accessory *after the fact* is a person who, knowing a felony to have been committed by another, receives, relieves, comforts or assists the felon, in order to enable him to escape from punishment, or the like. Buck v. Commonwealth, 116 Va. 1031, 83 S.E. 390, 393. Knowledge, or denial of knowledge, of perpetration of crime, or silence does not make one an "accessory after the fact." Commonwealth v. Giacobbe, 341 Pa. 187, 19 A.2d 71, 75. Cantu v. State, 135 S.W.2d 705, 710, 141 Tex.Cr.R. 99. But affirmative action by false testimony or otherwise usable by accused to escape punishment constitutes one "accessory" as to his testimony. Fisher v. State, 34 S.W.2d 293, 294, 117 Tex.Cr.R. 552; false statements to sheriff relative to defendant's connection with homicide in order to evade arrest, Littles v. State, 111 Tex.Cr.R. 500, 14 S.W.2d 853, 854.

### Aiders and Abettors Distinguished

The concept of an "accessory before the fact" presupposes a prearrangement to do the criminal act, and to constitute one an "alder and abettor" he must be on the ground and by his presence aid, encourage or incite the principal. Morel v. United States, C.C.A.Ohio, 127 F.2d 827, 830, 831.

### Principal Distinguished

"Principal in the second degree," as distinguished from "accessory before the fact," is one who aids in commission of felony by being either actually or constructively present, aiding, and abetting commission of felony, when perpetrated. Neumann v. State, 116 Fla. 98, 156 So. 237, 239.

ACCESSORY ACTION. In Scotch practice. An action which is subservient or auxiliary to another. Of this kind are actions of "proving the tenor," by which lost deeds are restored; and actions of "transumpts," by which copies of principal deeds are certified. Bell, Dict.

ACCESSORY CONTRACT. In the civil law. A contract which is incident or auxiliary to another or principal contract; such as the engagement of a surety. Poth. Obl. pt. 1, c. 1, § 1, art. 2.

A principal contract is one entered into by both parties on their own accounts, or in the several qualities they assume. An accessory contract is made for assuring the performance of a prior contract, either by the same parties or by others; such as suretyship, mortgage, and pledge. Blaisdell v. Coe, 83 N.H. 167, 139 A. 758, 65 A.L.R. 626.

ACCESSORY OBLIGATION.

### Civil Law

An obligation which is incident to another or principal obligation; the obligation of a surety. Poth. Obl. pt. 2, c. 1, § 6.

### Scotch Law

Obligations to antecedent or primary obligations, such as obligations to pay interest, etc. Ersk. Inst. lib. 3, tit. 3, § 60.

See, further, Obligation.

ACCESSORY TO ADULTERY. Implies more than connivance, which is merely knowledge with consent. A conniver abstains from interference; an accessory directly commands, advises, or procures the adultery. 20 & 21 Vict. c. 85, §§ 29, 31.

ACCIDENT. The word "accident" is derived from the Latin verb "accidere" signifying "fall upon, befall, happen, chance." In an etymological sense anything that happens may be said to be an accident and in this sense, the word has been defined as befalling; a change; a happening; an incident; an occurrence or event. In its most commonly accepted meaning, or in its ordinary or popular sense, the word may be defined as meaning a fortuitous circumstance, event, or happening, an event happening without any human agency, or if happening wholly or partly through human agency, an event which under the circumstances is unusual and unexpected by the person to whom it happens; an unusual, fortuitous, unexpected, unforeseen or unlooked for event, happening or occurrence; an unusual or unexpected result attending the operation or performance of a usual or necessary act or event; chance or contingency; fortune; mishap; some sudden and unexpected event taking place without expectation, upon the instant, rather than something which continues, progresses or develops; something happening by chance; something unforeseen, unexpected, unusual, extraordinary or phenominal, taking place not according to the usual course of things or events, out of the range of ordinary calculations; that which exists or occurs abnormally, or an uncommon occurrence; the word may be employed as denoting a calamity, casualty, catastrophe, disaster, an undesirable or unfortunate happening; any unexpected personal injury resulting from any unlooked for mishap or occurrence; any unpleasant or unfortunate occurrence, that causes injury, loss, suffering or death; some untoward occurrence aside from the usual course of events. Adams v. Metropolitan Life Ins. Co., 136 Pa.Super. 454, 7 A.2d 544, 547; without known or assignable cause, Ramsay v. Sullivan Mining Co., 51 Idaho 366, 6 P.2d 856, 858.

In its proper use the term excludes negligence; Dallas Ry. & Terminal Co. v. Allen, Tex.Civ.App., 43 S.W.2d 165, 170; that is, an accident is an event which occurs without the fault, carelessness, or want of proper circumspection of the person affected, or which could not have been avoided by the use of that kind and degree of care necessary to the exigency and in the circumstances in which he was placed. Brown v. Kendall, 6 Cush. (Mass.) 292; essential requirement being that happening be one to which human fault does not contribute, Hogan v. Kansas City Public Service Co., 322 Mo. 1103, 19 S.W.2d 707, 713, 65 A.L.R. 129; happening of an event without any human agency, Terry v. Woodmen Accident Co., 225 Mo.App. 1223, 34 S.W.2d 163, 164. It has been said, moreover, that the word "accident" does not have a settled legal signification; Klopfenstein v. Union Traction Co., 112 Kan. 770, 212 P. 1097, 1098; and that in its ordinary meaning it does not negative the idea of negligence on the part of the person whose physical act caused the occurrence. Campbell v. Jones, 73 Wash. 688, 132 P. 635, 636. Not merely inevitable casualty or the act of providence, or what is technically called vis major. or irresistible force. Gardner v. State, 1 N.Y.S.2d 994, 997, 166 Misc. 113.

See Act of God.

### Automobiles

The word "accident" as used in automobile liability policy requiring notice of any "accident"

to be given to the insurer as a condition precedent to liability means an untoward and unforeseen occurrence in the operation of the automobile which results in injury to the person or property of another. Ohio Casualty Ins. Co. v. Marr, C.C.A.Okl., 98 F.2d 973, 975.

Connotes event which occurs without one's foresight or expectation, and does not exclude negligence. American Indemnity Co. v. Jamison, Tex.Civ.App., 62 S.W.2d 197; without intention or design, Rothman v. Metropolitan Casualty Ins. Co., 134 Ohio St. 241, 16 N.E.2d 417, 421, 117 A. L. R. 1169.

The word "accident", requiring operator of vehicle to stop immediately in case of accident, contemplates any situation occurring on the highway wherein he so operates his automobile as to cause injury to the property or person of another using the same highway. State v. Masters, 10G W.Va. 46, 144 S.E. 718, 719.

Equity

Such an unforeseen event, misfortune, loss, act, or omission as is not the result of any negligence or misconduct in the party. Engler v. Knoblaugh, 131 Mo.App. 481, 110 S.W. 16.

Unforeseen and undesigned event, productive of disadvantage. Wharton. Surprise is used interchangeably. State ex rel. Hartley v. Innes, 137 Mo.App. 420, 118 S.W. 1168.

Occurrence, not the result of negligence or misconduct of the party seeking relief in relation to a contract, as was not anticipated by the parties when the same was entered into, and which gives an undue advantage to one of them over another in a court of law. White & Hamilton Lumber Co. v. Foster, 157 Ga. 493, 122 S.E. 29, 30.

Insurance Contracts

An accident within accident insurance policies is an event happening without any human agency, or, if happening through such agency, an event which, under circumstances, is unusual and not expected by the person to whom it happens. Sizemore v. National Casualty Co., 108 W.Va. 550, 151 S.E. 841.

Sudden and instant happening, referable to definite and fixed period of time. Jackson v. Employers' Liability Assur. Corporation, 248 N.Y.S. 207, 210, 139 Misc. 686.

May be inflicted intentionally and maliciously by one not the agent of the insured, if unintentional on the part of the insured. Goodwin v. Continental Casualty Co., 175 Okl. 469, 53 P.2d 241, 243.

A more comprehensive term than "negligence," and in its common signification the word means an unexpected happening without intention or design. Sontag v. Galer, 279 Mass. 309, 181 N.E. 182, 183.

Accidental' injury or death is an unintended and undesigned result arising from acts done, while injury or death by "accidental means" is a result arising from acts unintentionally done. Adams v. Metropolitan Life Ins. Co., 136 Pa.Super. 454, 7 A.2d 544, 547.

Maritime Law and Marine Insurance

"Accidents of navigation" or "accidents of the sea" are such as are peculiar to the sea or to usual navigation or the action of the elements, which do not happen by the intervention of man, and are not to be' avoided by the exercise of proper prudence, foresight, and skill. The G. R. Booth, 19 S.Ct. 9, 171 U.S. 450, 43 L.Ed. 234. See also Perils of the Sea.

Practice

That which ordinary prudence could not have guarded against. Cupples v. Zupan, 35 Idaho 458, 207 P. 328, 329. An event happening unexpectedly and without fault; an undesigned and unforeseen occurrence of an afflictive or unfortunate character; a casualty or mishap. Allen v. State, 13 Okl.Cr. 533, 165 P. 748; Baird v. Kensal Light & Power Co., 246 N.W. 279, 282, 63 N.D. 88; drunkenness of juror during recess required discharge of jury. Fetty v. State, 119 Neb. 619, 230 N.W. 440, 442.

Workmen's Compensation

Term "accident," within Workmen's Compensation Act, has been defined as a befalling; an event that takes place without one's foresight or expectation; an undesigned, sudden, and unexpected event; chance; contingency; often, an undesigned and unforeseen occurrence of an afflictive or unfortunate character; casualty; mishap; as, to die by an accident. Its synonyms are chance, contingency, mishap, mischance, misfortune, disaster, calamity, catastrophe. Term "accidental" has been defined as happening by chance, or unexpectedly; taking place not according to the usual course of things; casual; fortuitous; as, an accidental visit. Its synonyms are undesigned, unintended, chance, unforeseen, unexpected, unpremeditated; accessory, collateral, secondary,. subordinate; extrinsic, extraneous, additional, adscititious, dependent, conditional. Indian Territory Illuminating Oil Co. v. Williams, 157 Okl. 80, 10 P.2d 1093, 1094.

With or without negligence. Great Atlantic & Pacific Tea Co. v. Sexton, 242 Ky. 266, 46 S.W.2d 87, 88.

Not technical legal term. Arquin v. Industrial Commission, 349 Ill. 220, 181 N.E. 613, 614,

ACCIDENTAL. Happening by chance, or unexpectedly; taking place not according to usual course of things; casual; fortuitous. Morris *v.* New York Life Ins. Co., C.C.A.Md., 49 F.2d 62, 63; Murphy v. Travelers Ins. Co., Neb., 2 N.W.2d 576, 578, 579.

ACCIDENTAL KILLING. One resulting from an act which is lawful and lawfully done under a reasonable belief that no harm is possible;—distinguished from "involuntary manslaughter," which is the result of an unlawful act, or of a lawful act done in an unlawful way. Rowe v. Commonwealth, 206 Ky. 803, 268 S.W. 571, 573.

ACCIDENTAL VEIN. See Vein.

ACCIDERE. Lat. To fall; fall in; come to hand; happen. Judgment is sometimes given against an executor or administrator to be satisfied out of assets *quando acciderint; e.,* when they shall come to hand. See Quando Acciderint.

ACCION. In Spanish law. A right of action; also the method of judicial procedure for the

recovery of property or a debt. Escriche, Die. Leg. 49. Wilder v. Lambert, 91 Tex. 510, 44 S.W. 281, 284.

ACCIPERE QUID UT JUSTITIAM FACIAS, NON EST TAM ACCIPERE QUAM EXTORQUERE. To accept anything as a reward for doing justice is rather extorting than accepting. Lofft, 72.

ACCIPITARE. To pay relief to lords of manors. *Capitali domino accipitare,* e., to pay a relief, homage, or obedience to the chief lord on becoming his vassal. Fleta, lib. 2, c. 50.

ACCOLA.

Civil Law

One who inhabits or occupies land near a place, as one who dwells by a river, or on the bank of a river. Dig. 43, 13, 3, 6.

Feudal Law

A husbandman; an agricultural tenant; a tenant at a manor. Spelman. A name given to a class of villeins in Italy. Barr, St. 302.

ACCOMENDA. In maritime law. A contract between the owner of goods and the master of a ship, by which the former intrusts the property to the latter to be sold by him on their joint account.

In such case, two contracts take place : First, the contract called *mandatum,* by which the owner of the property gives the master power to dispose of it; and the contract of partnership, in virtue of which the profits are to be divided between them. One party runs the risk of losing his capital; the other, his labor. If the sale produces no more than first cost, the owner takes all the proceeds. It is only the profits which are to be divided. Emerig.Mar. Loans, § 5.

ACCOMMODATED PARTY. One to whom the credit of the accommodation party is loaned, and is not necessarily the payee, since the inquiry always is as to whom did the maker of the paper loan his credit as a matter of fact. Wilhoit v. Seavall, 121 Kan. 239, 246 P. 1013, 1015, 48 A.L.R. 1273; not third person who may receive advantage, State v. Banta, 148 Okl. 239, 299 P. 479, 483. First Nat. Bank v. Boxley, 129 Okl. 159, 264 P. 184, 186, 64 A.L.R. 588.

ACCOMMODATION. An arrangement or engagement made as a favor to another, not upon a consideration received; something done to oblige, usually spoken of a loan of money or commercial paper; also a friendly agreement or composition *of* differences. Abbott; Sales v. Martin, 173 Ky. 616, 191 *S.W.* 480, 482. The word implies no consideration. William D. Seymour & Co. v. Castell, 160 La. 371, 107 So. 143, 145.

"While a party's intent may be to aid a maker of note by lending his credit, if he seeks to accomplish thereby legitimate objects of his own, and not simply to aid maker, the act is not for 'accommodation.' " Bazer v. Grimmett, 16 La.App. 613, 135 So. 54, 56.

ACCOMMODATION ACCEPTANCE. The acceptance of accommodation paper.

ACCOMMODATION BILL OR NOTE. See Accommodation Paper.

ACCOMMODATION INDORSEMENT. See Indorsement.

ACCOMMODATION INDORSER. A party who places his name to a note without consideration for purpose of benefiting or accommodating some other party. Stubbins Hotel Co. v. Bassbarth, 43 N.D. 191, 174 N.W. 217, 218; McDaniel v. Altoona State Bank, 126 Kan. 719, 271 P. 394.

ACCOMMODATION LANDS. Land bought by a builder or speculator, who erects houses thereon, and then leases portions thereof upon an improved ground-rent.

ACCOMMODATION MAKER. One who puts his name to a note without any consideration with the intention of lending his credit to the accommodated party. In re Chamberlain's Estate, Cal. App., 109 P.2d 449, 454.

In this connection "without consideration" means "without consideration to the accommodating party directly." Warren Nat. Bank, Warren, Pa., v. Suerken, 45 Cal.App. 736, 188 P. 613, 614. One who receives no part of the proceeds, which are used exclusively for another maker's benefit, as in discharging his own personal obligation. Backer v. Grummett, 39 Cal.App. 101, 178 P. 312, 313. Must not receive any benefit or consideration directly or indirectly, and transaction must be one primarily for the benefit of the payee. First Trust Co. of Lincoln v. Anderson, 135 Neb. 397, 281 N.W. 796, 798; Void of present or anticipated personal profit, gain, or advantage. Robertson v. City Nat. Bank of Bowie, 120 Tex. 226, 36 S.W.2d 481, 483.

Incidental benefit to party insufficient. Morrison v. Painter, Mo.App., 170 S.W.2d 965, 970.

ACCOMMODATION NOTE. One to which accommodating party has put his name, without consideration, to accommodate some other party, who is to issue it and is expected to pay it. Brown Carriage Co. v. Dowd, 155 N.C. 307, 71 S.E. "721, 724; Farmers Loan & Trust Co. v. Brown, 182 Iowa, 1044, 165 N.W. 70, 73.

ACCOMMODATION PAPER. An accommodation bill or note is one to which the accommodating party, be he acceptor, drawer, or indorser, has put his name, without consideration, for the purpose of benefiting or accommodating some other party who desires to raise money on it, and is to provide for the bill when due. Miller v. Larned, 103 Iii. 562; Crothers v. National Bank of Chesapeake City, 158 Md. 587, 149 A. 270, 272; Hickox v. Hickox, Tex.Civ.App., 151 S.W.2d 913, 917.

Must be executed for the purpose of loaning credit, and incidental benefit to party is insufficient. Morrison v. Painter, Mo.App., 17C .3.W.2d 965, 970.

ACCOMMODATION PARTY. One who has signed an instrument as maker, drawer, acceptor, or indorser without receiving value therefor, and for purpose of lending his name to some other person as means of securing credit. Bachman v. Junkin, 129 Neb. 165, 260 N.W. 813.

The term does not include one who, for the accommodation of the maker, guaranteed the payment of a note. Noble v. Beeman-Spaulding-Woodward Co., 65 Or. 93, 131 P. 1006, 1010.

Indorser, Myrtilles, Inc., v. Johnson, 124 Conn. 177, 199 A. 115, 117; president and directors of bank, Davis v. Holt, Federal Deposit Ins. Corporation, Intervenor, Mo.App., 154

S.W.2d 595. 597; apparent comaker. McLendon v. Lane, 51 Ga.App. 409, 180 S.E. 746; to make note look better for payee bank, Pirtle v. Johnson, 145 Kan. 8, 64 P.2d 2, 4.

ACCOMMODATION ROAD. A road opened for benefit of certain individuals to go from and to their homes, for service of their lands, and for use of some estates exclusively. Civ.Code La. art. 706.

ACCOMMODATION TRAIN. One designed to accommodate local travel by stopping at most stations. Gray v. Chicago, M. & St. P. R. Co., 189 Ill. 400, 59 N.E. 950, 951. In another aspect it is a train designed to carry passengers as well as freight. White v. Ill. Cent. R. Co., 99 Miss. 651, 55 So. 593, 595.

ACCOMMODATION WORKS. Works which a railway company is required to make and maintain for the accommodation of the owners or occupiers of land adjoining the railway; *e. g.*, gates, bridges, culverts, fences, etc. 8 Vict. c. 20, § 68.

ACCOMMODATUM. The same as *commodatum, q.*

ACCOMPANY. To go along with. Webster's Diet. To go with or attend as a companion or associate, to occur in association with. United States v. Lee, C.C.A.Wis., 131. F.2d 464, 466.

The word has been defined judicially in cases involving varied facts; thus, a boy driver was held not accompanying the team when he was runnning to stop it. Willis v. Semmes, 111 Miss. 589, 71 So. 865, 866. A motion based on answer already deposited with the clerk of court is accompanied with copy of answer. Los Angeles County v. Lewis, 179 Cal. 398, 177 P. 154, 155. An automobile driver under sixteen is not accompanied by an adult person unless the latter exercises supervision over the driver. Rush v. McDonnell, 214 Ala. 47, 106 So. 175, 179. An unlicensed driver is not accompanied by a licensed driver unless the latter is near enough to render advice and assistance. Hughes v. New Haven Taxicab Co., 87 Conn. 416, 87 A. 721.

ACCOMPLICE. In criminal law. A person who knowingly, voluntarily, and with common intent with the principal offender unites in the commission of a crime. State v. Keithley, 83 Mont. 177, 271 P. 449, 451, People v. Frahm, 107 Cal.App. 253, 290 P. 678, 682, State v. Coroles, 74 Utah, 94, 277 P. 203, 204. One who is in some way concerned or associated in commission of crime; partaker of guilt; one who aids or assists, or is an accessory. McLendon v. U. S., C.C.A.Mo., 19 F.2d 465, 466. Equally concerned in the commission of crime. Fryman v. Commonwealth, 289 Ky. 540, 159 S.W. 2d 426, 429.

An "accomplice" is one who is guilty of complicity in crime charged, either by being present and aiding or abetting in it, or having advised and encouraged it, though absent from place when it was committed, though mere presence, acquiescence, or silence, in the absence of a duty to act, is not enough, no matter how reprehensible it may be, to constitute one an accomplice. State v. Arnold, 84 Mont. 348. 275 P. 757, 760; presence unnecessary. King v. State. 135 Tex.Cr.11. 378, 120 S.W.2d 590, 592. Knowledge and concealment not sufficient. Wallis v. State, Okl. Cr.App., 292 P. 1056, 1057.

Falsely denying having knowledge of crime not of itself sufficient. Tipton v. State, 126 Tex.Cr.R. 439, 72 S.W.2d 290, 293.

Thief and receiver of stolen property ordinarily not "accomplices". People v. Lima, 25 Cal.2d 573, 154 P.2d 698, 700, 701.

Giver of bribe is an "accomplice". Turner *v.* State, 58 Ga.Lpp. 775, 199 S.E. 837, 839, Contra, State v. Emory, 55 Idaho 649, 46 P.2d 67, 70.

As specifically applied to witnesses for the state and the necessity for corroborating them, "accomplice" includes all persons connected with the offense by an unlawful act or omission either before, at the time of, or after the commission of the offense, whether such witness was present or participated in the crime or not. Chandler v. State, 89 Tex.Cr.R. 309, 230 S.W. 1002, 1003.

Mere presence is insufficient. Snowden v. State, 27 Ala. App. 14, 165 So. 410.

Suborned witness is an "accomplice". People v. Nicosia, 4 N.Y.S.2d 35, 37, 166 Misc. 597. Contra. State v. De Vaughn, 2 Cal.App.2d 572, 39 P.2d 223, 224.

Receiver of bribe not "accomplice" of giver. People v. Martin, 114 Cal.App. 392, 300 P. 130, 132.

The term includes all the *participes criminis,* Darden v. State, 12 Ala.App. 165, 68 So. 550, 551, whether they are considered, in strict legal propriety, as principals in the first or second degree, or merely as accessories before or after the fact. In re Rowe, 23 C.C.A. 103, 77 F. 161; Luck v. State, 125 Tex.Cr.R. 152, 67 S.W.2d 302. But in Kentucky it has been held that "accomplice" does not include an accessory after the fact. See, however, Commonwealth v. Barton, 153 Ky. 465, 156 S.W. 113, 114. And the same rule has been announced elsewhere. State v. Lyons, 144 Minn. 348, 175 N.W. 689, 691. A feigned accomplice has been defined as one who co-operates with view of aiding justice to detect a crime. State v. Verganadis, 50 Nev. 1, 248 P. 900, 903; Decoy not "accomplice". U. S. v. Becker, C.C.A.N.Y., 62 F.2d 1007, 1009.

Liquor control board inspector, Magee v. State, 135 Tex. Cr.R. 381, 120 S.W.2d 248, 249.

ACCORD, n. A satisfaction agreed upon between the party injuring and the party injured which, when performed, is a bar to all actions upon this account. Kromer v. Heim, 75 N.Y. 576, 31 Am. Rep. 491; Buob v. Feenaughty Machinery Co., 191 Wash. 477, 71 P.2d 559, 564. An agreement to accept, in extinction of an obligation, something different from or less than that to which the person agreeing to accept is entitled. Whepley Oil Co. v. Associated Oil Co., 6 Cal.App.2d 94, 44 P.2d 670, 677.

Substitution of an agreement between the party injuring and the party injured, in view of the *original* obligation. Barbarich v. Chicago, M., St. P. & P. Ry. Co., 92 Mont. 1, 9 P.2d 797, 799.

It may arise both where the demand itself is unliquidated or in dispute, and where the amount and nature of the demand is undisputed, and it is agreed to give and take less than the demand. J. F. Morgan Paving Co. v. Carroll, 211 Ala. 121, 99 So. 640, 641.

"Payment," as distinguished from accord, means full satisfaction. State v. Tyler County State Bank, Tex.Com. App., 277 S. W. 625, 627, 42 A.L.R. 1347.

See Accord and Satisfaction; Compromise and Settlement.

ACCORD, v. In practice. To agree or concur, as one judge with another. "I accord." Eyre, C. J., 12 Mod. 7. "The rest accorded." 7 Mod. 361.

ACCORD AND SATISFACTION. An agreement between two persons, one of whom has a right of action against the other, that the latter should do or give, and the former accept, something in satisfaction of the right of action different from, and usually less than, what might be legally enforced.

When the agreement is executed, and satisfaction has been made, it is called "accord and satisfaction." Rogers v. Spokane, 9 Wash. 168, 37 P. 300.

It is discharge of contract, or of disputed claim arising either from contract or from tort, by substitution of agreement between parties in satisfaction of such contract or disputed claim and execution of the agreement. Nelson v. Chicago Mill & Lumber Corporation, C.C.A.Ark., 76 F.2d 17, 100 A.L.R. 87.

"Accord and satisfaction" results where there is assent to acceptance of payment in compromise of dispute, or in extinguishment of liability uncertain in amount, or where payment, coupled with condition whereby use of money will be wrongful if condition is ignored, is accepted. Hudson v. Yonkers Fruit Co., 258 N.Y. 168, 179 N.E. 373. Regardless of whether claim is liquidated or unliquidated. May Bros. v. Doggett, 155 Miss. 849, 124 So. 476, 478.

Settlement of claims under insurance policies. Lehaney v. New York Life Ins. Co., 307 Mich. 125, 11 N.W.2d 830, 832.

Accepted amount tendered by insurer as cash surrender value of policies. Greenberg v. Metropolitan Life Ins. Co., 379 Ill. 421, 41 N.E.2d 495, 497, 140 A.L.R. 775.

See, also, Sierra & San Francisco Power Co. v. Universal Electric & Gas Co., 197 Cal. 376, 241 P. 76, 80.

More recently, a broader application of the doctrine has been made, where one promise or agreement is set up in satisfaction of another. Continental Nat. Bank v. McGeoch, 92 Wis. 286, 66 N.W. 606.

An "accord and satisfaction arises" where parties, by a subsequent agreement, have satisfied the former one, and the latter agreement has been executed. The execution of a new agreement may itself amount to a satisfaction, where it is so expressly agreed by the parties ; and without such agreement, if the new promise is founded on a new consideration, in which case the taking of the new consideration amounts to the satisfaction of the former contract.

A dispute or controversy is not an essential element of some forms of accord and satisfaction, as an accord and satisfaction of a liquidated claim by the giving and acceptance of a smaller sum and some additional consideration, such as new security, payment of the debt before due, payment by a third person, or where property or personal services are accepted from an insolvent debtor in satisfaction. Burgamy v. Holton, 165 Ga. 384, 141 S.E. 42, 47.

"Composition settlement" contemplates agreement not only between debtor and creditors, but also among creditors, whereas "accord and satisfaction" is agreement between debtor and single creditor. Russell v. Douget, La.App., 171 So. 501, 502.

"Novation" is a species of "accord and satisfaction". Munn v. Town of Drakesville, 226 Iowa 1040, 285 N.W. 644, 648.

See Acceptance; Composition; Compromise; Novation.

ACCORDANCE. Agreement; harmony; concord; conformity. Webster, Dict.; City and County of San Francisco v. Boyd, 22 Cal.2d 685, 140 P.2d 666, 668.

An act done .in accordance with a purpose once formed is not necessarily an act done in pursuance of such purpose, for the purpose may have been abandoned before the act was done. State v. Robinson, 20 W.Va. 713, 742. A charter providing that a city's power of taxation shall be exercised "in accordance with" the state Constitution and laws means in a manner not repugnant to or in conflict or inconsistent therewith. City of Norfolk v. Norfolk Landmark Pub. Co., 95 Va. 564, 28 S.E. 959, 960. The words "in accordance with this act" as used in N. M. Laws 1899, c. 22, § 25, dealing with validity of tax titles, was not improperly interpreted as meaning "under this act." Straus v. Foxworth, 231 U.S. 162, 34 S.Ct. 42, 44, 58 L.Ed. 168.

ACCORDANT. Fr. and Eng. Agreeing; concurring. "Baron Parker, *accordant,"* Hardr. 93; "Holt, C. J., *accordant,"* 6 Mod. 299; "Powys, J., *accord,"* "Powell, J., *accord,"* Id. 298.

ACCOUCHEMENT. The act of a woman in giving birth to a child. The fact of the accouchement, which may be proved by the direct testimony of one who was present, as a physician or midwife, is often important evidence in proving parentage.

ACCOUNT. A detailed statement of the mutual demands in the nature of debt and credit between parties, arising out of contracts or some fiduciary relation. Portsmouth v. Donaldson, 32 Pa. 202, 72 Am.Dec. 782.

A statement in writing, of debts and credits, or of receipts and payments; a list of items of debts and credits, with their respective dates. Rensselaer Glass Factory v. Reid, 5 Cow., N.Y., 593.

An "account" is defined as a statement of pecuniary transactions; a record or course of business dealings between parties ; a list or statement of monetary transactions, such as payments, losses, sales, debits, credits, etc., in most cases showing a balance or result of comparison between items of an opposite nature; and is not held to include a liability for unliquidated damages resulting from the breach of an entire contract, expressing only an entire consideration. Harnischfeger Sales Corporation v. Pickering Lumber Co., C.C.A.Mo., 97 F.2d 692, 695.

The word is sometimes used to denote the balance, or the right of action for the balance, appearing due upon a statement of dealings ; as where one speaks of an assignment of accounts ; but there is a broad distinction between an account and the mere balance of an account, resembling the distinction in logic between the premises of an argument and the conclusions drawn therefrom. A balance is but the conclusion or result of the debit and credit sides of an account. It implies mutual dealings, and the existence of debt and credit, without which there could be no balance. McWilliams v. Allan, 45 Mo. 574.

A generic term, difficult to define, having various meanings, depending somewhat upon the surrounding circumstances and the connection in which it is used. Wolcott & Lincoln v. Butler, 155 Kan. 105, 122 P.2d 720, 722, 141 A. L. R. 356.

Flexible in meaning, meaning valuation; worth; value. Ex parte Means, 200 Ala. 378, 76 So. 294; may refer either to past or future indebtedness, Semel v. Braun, 157 N.Y. S. 907, 908, 94 Misc. 238; an itemized account, Brooks v. International Shoe Co., 132 Ark. 386, 200 S.W. 1027.

### Closed

An account to which no further additions can be made on either side, but which remains stil. open for adjustment and set-off, which distinguishes it from an account stated. Mandeville v. Wilson, 5 Cranch 15, 3 L.Ed. 23.

### Current

An open or running or unsettled account between two parties; the antithesis of an account stated. See Watson v. Gillespie, 200 N.Y.S. 191, 198, 205 App.Div. 613; Caffarelli Bros. v. Lyons Bros. Co., Tex.Civ.App., 199 S.W. 685, 686; Continental Casualty Co. v. Easley, Tex.Civ.App., 290 S.W. 251, 253.

An "account current" is an active checking account, through which credit and debit items are constantly passing. In re Fricke's Will, 202 N.Y.S. 906, 912, 122 Misc. 427.

All items must constitute one demand. Meyers v. , Barrett & Zimmerman, 196 Minn. 276, 264 N.W. 769, 773.

Duties

Duties payable by the English customs and inland revenue act, 1881, (44 Vict. c. 12, § 38,) on a *donatio mortis causa,* or on any gift, the donor of which dies within three months after making it, or on joint property voluntarily so created, and taken by survivorship, or on property taken under a voluntary settlement in which the settlor had a life-interest.

Mutual

Accounts comprising mutual credits between the parties; or an existing credit on one side which constitutes a ground for credit on the other, or where there is an understanding that mutual debts shall be a satisfaction or set-off *pro tanto* between the parties. McConnell v. Arkansas Coffin Co., 172 Ark. 87, 287 S.W. 1007.

Open

An account which has not been finally settled or closed, but is still running or open to future adjustment or liquidation. Open account, in legal as well as in ordinary language, means an indebtedness subject to future adjustment, and which may be reduced or modified by proof. James v. Lederer-Strauss & Co., 32 Wyo. 377, 233 P. 137, 139.

An open account can become an account stated only by the debtor's admission of liability, or failure to deny liability for a reasonable time after receipt of account. Brooks v. White, 187 N. C. 656, 122 S.E. 561.

Payable

"Accounts payable" are contract obligations owing by a person on open account. West Virginia Pulp & Paper Co. v. Karnes, 120 S.E. 321, 322, 137 Va. 714; State Tax Commission v. Shattuck, 38 P.2d 631, sn, 44 Ariz. 379.

Public

The accounts kept by officers of the nation, state, or kingdom, of the receipt and expenditure of the revenues of the government.

Rendered

An account made out by the creditor, and presented to the debtor for his examination and acceptance. When accepted, it becomes an account stated. Freeland v. Cocke, 17 Va. (3 Munf.) 352.

Settled

One in which the balance has been in fact paid, thereby differing from an account stated. See Dempsey v. McGinnis, 219 S.W. 148, 150, 203 Mo. App. 494.

Stated

The settlement of an account between the parties, with a balance struck in favor of one of them; an account rendered by the creditor, and by the debtor assented to as correct, either expressly, or by implication of law from the failpre to object. Preston v. La Belle View Corporation, 212 N.W. 286, 288, 192 Wis. 168.

Monthly statements rendered by bank without depositor's objection, Pierce & Garnet v. Live Stock Nat. Bank, 213 Iowa 1388, 239 N.W. 580, 583.

Unperformed promise of one party to pay a stated sum. Hammond Lumber Co. v. Richardson Building & Lumber Co., 209 Cal. 82, 285 P. 851, 853.

An agreement between 'parties who have had previous transactions of a monetary character that all the items of the account representing such transactions, and the balance struck, are correct, together with a promise, express or implied, for the payment of such balance. Pelavin v. Fenton, Davis & Boyle, 255 Mich. 680, 239 N.W. 268, 269.

No particular form is necessary; it may be oral, written, partly oral and partly written. Murphy v. Smith, 26 Ariz. 394, 226 P. 206, 208. An account stated is not ordinarily recognized in Virginia and West Virginia, except as between merchant and merchant, and principal and agent, with mutual accounts. Price Hill Colliery Co. v. Pinkney, 96 W.Va. 74, 122 S.E. 434, 436. This was also a common count in a declaration upon a contract under which the plaintiff might prove an absolute acknowledgment by the defendant of a liquidated demand of a fixed amount, which implies a promise to pay on request. It might be joined with any other count for a money demand. The acknowledgment or admission must have been made to the plaintiff or his agent. Wharton.

ACCOUNT, or ACCOUNT RENDER. In practice. "Account," sometimes called "account render," was a form of action at common law against a person who by reason of some fiduciary relation (as guardian, bailiff, receiver, etc.) was bound to render an account to another, but refused to do so. Portsmouth v. Donaldson, 32 Pa. 202, 72 Am.Dec. 782; Peoples Finance & Thrift Co. of Visalia v. Bowman, 137 P.2d 729, 731, .58 Cal.App.2d 729.

"Action of account" *is* common-law action to compel person to render account for property or money of another. Dahlberg v. Fisse, 328 Mo. 213, 40 S.W.2d 606, 609. Equitable in nature. Gaines Bros. Co. v. Gaines, 188 Okl. 300, 108 P.2d 177, 179.

In England, this action early fell into disuse; and as it is one of the most dilatory and expensive actions known to the law, and the parties are held to the ancient rules of pleading, and no discovery can be obtained, it never was adopted to any great extent in the United States. But in some states this action was employed, chiefly because there were no chancery courts in which a bill for an accounting would lie. The action is peculiar in the fact that two judgments are rendered, a preliminary judgment that the defendant do account with the plaintiff *(quod computet)* and a final judgment *(quod recuperet)* after the accounting for the balance found due. Field v. Brown, 146 Ind. 293, 45 N.E. 464, 16 Blatchf. 178.

ACCOUNT-BOOK. A book kept by a merchant, trader, mechanic, or other person, in which are entered from time to time the transactions of his trade or business. Greenl. Ev. §§ 115-118.

Volumes bound or sewed together in which accounts are regularly kept, and excluding collections of loose and indeterminate memoranda. W. T. Raleigh Co. v. Rotenberry, 174 Miss. 319, 164 So. 5, 6. May now include modern book of detachable leaves, but leaves must be of such appropriate uniformity of material as reasonably to constitute leaves of account book in which they are contained. W. T. Raleigh Co. v. Rotenberry, 174 Miss. 319, 164 So. 5, 6.

ACCOUNT COMPUTATIO. The primary idea of "account computatio", whether in proceedings of courts of law or equity, is some matter of debt and credit, or demand in nature thereof. Coleman v. Kansas City, 351 Mo. 254, 173 S.W.2d 572, 576.

ACCOUNT FOR. To pay over the money to the person entitled thereto. U. S. v. Rehwald, D.C. Cal., 44 F.2d 663.

ACCOUNT IN BANK, See Bank Account.

ACCOUNTABLE. Subject to pay; responsible; liable. Where one indorsed a note "A. C. accountable," it was held that, under this form of indorsement, he had waived demand and notice. Furber v. Caverly, 42 N.H. 74.

ACCOUNTABLE RECEIPT. An instrument acknowledging the receipt of money or personal property, coupled with an obligation to account for or pay or deliver the whole or some part of it to some person. State v. Riebe, 7 N.W. 262, 27 Minn. 315.

ACCOUNTANT. One who keeps accounts; a person skilled in keeping books or accounts; an expert in accounts or bookkeeping. See U. S. ex rel. Liebmann v. Flynn, D.C.N.Y., 16 F.2d 1006, 1007; Frazer v. Shelton, 150 N.E. 696, 701, 320 Ill. 253.

One competent to design and control systems of accounts. Roberts v. Hosking, 95 Mont. 562, 28 P.2d 199, 201.

A person who renders an account: an executor, guardian, etc.

ACCOUNTANT GENERAL, or ACCOMPTANT GENERAL. An officer of the court of chancery, appointed by act of parliament to receive all money lodged in court, and to place the same in the Bank of England for security. 12 Geo. I. c. 32; 1 Geo. IV, c. 35; 15 & 16 Vict. c. 87, §§ 18-22, 39. See Daniell, Ch.Pr. (4th Ed.) 1607 et seq. The office, however, has been abolished by 35 & 36 Vict. c. 44, and the duties transferred to her majesty's paymaster general.

ACCOUNTANTS, CHARTERED. Persons skilled in the keeping and examination of accounts, who are employed for the purpose of examining and certifying to the correctness of accounts of corporations and others. British Commonwealth equivalent of Certified Public Accountant.

ACCOUNTING. An act or system of making up or settling accounts; a statement of account, or a debit and credit in financial transactions. Kansas City v. Burns, 137 Kan. 905, 22 P.2d 444.

Rendition of an account, either voluntarily or by order of a court. Buxton v. Edwards, 134 Mass. 567, 578. In the latter case, it imports a rendition of a judgment for the balance ascertained to be due. Apple v. Smith, 106 Kan. 717, 190 P. 8, 10. The term may include payment of the amount due. Pyatt v. Pyatt, 46 N.J.Eq. 285, 18 A. 1048.

ACCOUNTS RECEIVABLE. Contract obligations owing to a person on open account. West Virginia Pulp & Paper Co. v. Karnes, 137 Va. 714, 120 S.E. 321, 322; charge accounts, Haverfield Co. v. Evatt, 143 Ohio St. 58, 54 N.E.2d 149, 152, installment balances, Duke Power Co. v. Hillsborough Tp., Somerset County, 20 N.J.Misc. 240, 26 A.2d 713, 725.

ACCOUPLE. To unite; to marry. *Ne unques accouple,* never married.

ACCREDIT. In international law. (1) To acknowledge; to receive as an envoy in his public character, and give him credit and rank accordingly. Burke. (2) To send with credentials as an envoy. Webst.Dict. This latter use is now the accepted one.

ACCREDITED LAW SCHOOL. "An accredited law school" and a "law school approved by this court," are synonymous. Ex parte State Board of Law Examiners of Florida, 141 Fla. 706, 193 So. 753.

ACCREDITED REPRESENTATIVE. As respects service of process, representative having general authority to act. Rorick v. Stilwell, 101 Fla. 4, 133 So. 609, 615.

ACCREDULITARE. L. Lat. In old records. To purge an offense by oath. Blount; Whishaw.

ACCRESCERE. In the civil and old English law. To grow to; to increase; to pass to, and become united with, as soil to land *per alluvionem.* Dig. 41, 1, 30, pr. The term is used in speaking of islands which are formed in rivers by deposit; Calvinus, Lex.; 3 Kent 428. It is used in a related sense in the common-law phrase *jus accrescendi,* the right of survivorship; 1 Washb.R.P. 426.

Pleading

To commence; to arise; to accrue. *Quod actio non accrevit infra sex anos,* that the action did not accrue within six years; 3 Chit.P1. 914.

ACCRETION. The act of growing to a thing; usually applied to the gradual and imperceptible accumulation of land by natural causes, as out of the sea or a river.

Civil Law

The right of heirs or legatees to unite or aggregate with their shares or portions of the estate the portion of any co-heir or legatee who refuses to accept it, fails to comply with a condition, becomes incapacitated to inherit, or dies before the testator. Anderson v. Lucas, 204 S.W. 989, 993, 140 Tenn. 336. Under a deed of trust: Miller v. Douglass, 192 Wis. 486, 213 N.W. 320, 322.

Mortgages

As used in a mortgage on cattle, with all increase thereof and accretions thereto, the word "accretions" is not confined to the results of natural growth, but includes the additions of parts from without, i. e., of cattle subsequently added to the herd. Stockyards Loan Co. v. Nichols, C.C.A.Okl., 243 F. 511, 513, 1 A.L.R. 547.

Realty

Addition of portions of soil, by gradual deposition through the operation of natural causes, to that already in possession of owner. St. Louis, etc., R. Co. v. Ramsey, 53 Ark. 314, 13 S.W. 931, 8 L.R.A. 559, 22 Am.St.Rep. 195; 51 L.R.A. 425, n.; Willett v. Miller, 176 Okl. 278, 55 P.2d 90, 92. Along banks of navigable or unnavigable stream. Smith v. Whitney, 105 Mont. 523, 74 P.2d 450, 453, change in river boundary, Hancock v. Moore, Tex.Civ.

App., 137 S.W.2d 45, 51, 52. Tideland artificially filled was not an "accretion". City of Newport Beach v. Fager, 39 Cal.App.2d 23, 102 P.2d 438, 442.

Accretion of land is of two kinds : By *alluvion, 1. e.,* by the washing up of sand or soil, so as to form firm ground; or by *dereliction,* as when the sea shrinks below the usual water-mark. The term "alluvion" is applied to deposit itself, while "accretion" denotes the act. However, the terms are frequently used synonymously. Katz v. Patterson, 135 Or. 449, 296 P. 54, 55. In determining whether change in course of river is by "accretion" or "avulsion," test is not whether witnesses might see from time to time that progress has been made, but whether witnesses could perceive change while it was going on. Goins v. Merryman, 183 Okl. 155, 80 P.2d 268, 270. Land uncovered by gradual subsidence of water is not an "accretion" but a "reliction." Independent Stock Farm v. Stevens, 128 Neb. 619, 259 N.W. 647, 648.

Trust Property

Receipts other than those ordinarily considered as income; and ordinary cash dividends, the sole income, were not accretions. Doty v. C. I. R., C.C. A.1, 148 F.2d 503, 505.

See Accrue; Avulsion; Alluvion; Reliction.

ACCROACH. To encroach; to exercise power without due authority. In French law, to delay. Whishaw.

To attempt to exercise royal power. 4 Bl.Comm. 76. A knight who forcibly assaulted and detained one of the king's subjects till he paid him a sum of money was held to have committed treason, on the ground of accroachment. 1 Hale, P.C. 80.

ACCROCHER. Fr. To delay; retard; put off. *Accrocher un procès,* to stay the proceedings in a suit.

ACCRUAL, CLAUSE OF. See Accruer, Clause of.

ACCRUAL BASIS. A method of keeping accounts which shows expenses incurred and income earned for a given period, although such expenses and income may not have been actually paid or received in cash. Orlando Orange Groves Co. v. Hale, 119 Fla. 159, 161 So. 284.

Right to receive and not the actual receipt determines inclusion of amount in gross income. When right to receive an amount becomes fixed, right accrues. H. Liebes & Co. *v.* Commissioner of Internal Revenue, C.C.A.9, 90 F.2d 932, 937. Obligations payable to or by taxpayer are treated as if discharged when incurred. H. Liebes & Co. v. Commissioner of Internal Revenue, C.C.A.9, 90 F.2d 932, 936. Entries are made of credits and debits when liability arises, whether received or disbursed. Insurance Finance Corporation v. Commissioner of Internal Revenue, C.C.A.3, 84 F.2d 382. Books showing sales by accounts receivable and purchases by accounts payable, and set up inventories at beginning and end of year. Consolidated Tea Co. v. Bowers, D.C.N.Y., 19 F.2d 382.

ACCRUE. Derived from the Latin, "ad" and "creso," to grow to. In past tense, in sense of due and payable; vested. It means to increase; to augment; to come to by way of increase; to be added as an increase, profit, or damage. Hartsfield Co. v. Shoaf, 184 Ga. 378, 191 S.E. 693, 695. Acquired; fell due; made or executed; matured; occurred; received; vested; was created; was incurred. H. Liebes & Co. v. Commissioner of Internal Revenue, C.C.A.9, 90 F.2d 932, 936. To attach itself to, as a subordinate or accessory claim or demand arises out of, and is joined to, its principal. Lifson v. Commissioner of Internal Revenue, C.C.A.8, 98 F.2d 508.

Produce of money lent. "Interest accrues to principal." Weiss v. Commissioners of Land Office, 182 Okl. 39, 75 P.2d 1142, 1144. Costs accrue to a judgment.

The term is also used of independent or original demands, and then means to arise, to happen, to come into force or existence; to vest; as in the phrase, "The right of action did not *accrue* within six years." Amy v. Dubuque, 98 U.S. 470, 476, 25 L. Ed. 228. To 'become a present right or demand; to come to pass. H. Liebes & Co. v. Commissioner of Internal Revenue, C.C.A.9, 90 F.2d 932, 936.

It is distinguished from sustain; Adams v. Brown, 4 Litt. (Ky.) 7; and from owing; Gross v. Partenheimer, 159 Pa. 556, 28 A. 370; Fay v. Holloran, 35 Barb. (N. Y.) 295; it is also distinguished from arise; State v. Circuit Court of Waushara County, 165 Wis. 387, 162 N.W. 436, 437.

Cause of Action

A cause of action "accrues" when a suit may be maintained thereon. Dillon v. Board of Pension Com'rs of City of Los Angeles, 18 Ca1.2d 427, 116 P.2d 37, 39, 136 A.L.R. 800. Whenever one person may sue another. Hensley v. Conway, Tex.Civ.App., 29 S.W.2d 416, 418.

Cause of action "accrues," on date that damage is sustained and not date when causes are set in motion which ultimately produce injury. City of Philadelphia v. Lieberman, C.C.A.Pa., 112 F.2d 424, 428. Date of injury. Fredericks v. Town of Dover, 125 N.J.L. 288, 15 A.2d 784, 787. When actual damage has resulted. National Lead Co. v. City of New York, C.C.A.N.Y., 43 F.2d 914, 916. As soon as contract is breached. Wichita Nat. Bank v. United States Fidelity & Guaranty Co., Tex.Civ.App., 147 S.W.2d 295, 297.

Contracts

The word accrued, as Used in reference to contracts in which process may be sent out of the country to be served, has reference to the place where the contract was made and executed. Phelps v. McGee, 18 Ill, 155, 158.

Taxation

Income "accrues" to taxpayer when there arises to him a fixed or unconditional right to receive it. Franklin County Distilling Co. v. Commissioner of Internal Revenue, C.C.A.6, 125 F.2d 800, 804, 805. But not unless there is a reasonable expectancy that the right will be converted into money or its equivalent. Swastika Oil & Gas Co. v. Commissioner of Internal Revenue, C.C.A.6, 123 F.2d 382, 384.

Where taxpayer makes returns on accrual basis, item "accrues" when all events occur which fix amount payable and determine liability of taxpayer. Hudson Motor Car Co. v. U. S., Ct.C1., 3 F. Supp. 834, 847.

Tax "accrues" for deduction when all events have occurred which fix amount of tax and determine liability of taxpayer for it, although there has not yet been assessment or maturity. Elmhirst v. Duggan, D.C.N.Y., 14 F.Supp. 782, 784.

Estate tax "accrued," immediately on death, though not payable until one year thereafter. Ewbank v. U. S., C.C.A.Ind., 50 F.2d 409.

ACCRUED COMPENSATION. Awarded compensation, due and payable. Wood Coal Co. v. State Compensation Com'r, 119 W.Va. 581, 195 S.E. 528, 529,

ACCRUED DEPRECIATION. The lessened service value of the utility plant due to its consumption in furnishing service. Wisconsin Telephone Co. v. Public Service Commission, 232 Wis. 274, 287 N.W. 122, 152. Portion of useful service life which has expired. State ex rel. City of St. Louis v. Public Service Commission, 341 Mo. 920, 110 S. W.2d 749, 768.

ACCRUED RIGHT. As used in Constitution, a matured cause of action, or legal authority to demand redress. Morley v. Hurst, 174 Okl. 2, 49 P. 2d 546, 548.

ACCRUER (or ACCRUAL), CLAUSE OF. An express clause, frequently occurring in the case of gifts by deed or will to persons as tenants in common, providing that upon the death of one or more of the beneficiaries his or their shares shall go to the survivor or survivors. Brown. The share of the decedent is then said to *accrue* to the others.

ACCRUING. Inchoate; in process of maturing. That which will or may, at a future time, ripen into a vested right, an available demand, or an existing cause of action. Hartsfield Co. v. Shoal, 184 Ga. 378, 191 S.E. 693, 695. Arising by way of increase, growth or profit. It connotes continuing growth, increase or augmentation. Globe Indemnity Co. v. Bruce, C.C.A.Okl., 81 F.2d 143, 153.

ACCRUING COSTS. Costs and expenses incurred after judgment.

ACCRUING INTEREST. Running or accumulating interest, as distinguished from accrued or matured interest; interest daily accumulating on the principal debt but not yet due and payable. Gross v. Partenheimer, 159 Pa. 556, 28 A. 370.

ACCRUING RIGHT. One that is increasing, enlarging, or augmenting. Richards v. Land Co., 54 F. 209, 4 C.C.A. 290.

ACCT. An abbreviation for "account," of such universal and immemorial use that the courts will take judicial notice of its meaning. Heaton v. Ainley, 108 Iowa, 112, 78 N.W. 798.

ACCUMULATED PROFITS. Earned surplus or undivided profits. Flint v. Commissioner of Corporations and Taxation, 43 N.E.2d 789, 791, 792, 312 Mass. 204.

Include profits earned and invested. Commissioner of Corporations and Taxation v. Filoon, 310 Mass. 374, 38 N.E.2d 693, 698, 700.

And they take into account losses, as well as gains. Commissioner of Corporations and Taxation v. Church, Mass., 61 N.E.2d 143, 145.

ACCUMULATED SURPLUS. In statutes relative to the taxation of corporations, this term refers to the fund which the company has in excess of its capital arid liabilities. Trenton Iron Co. v. Yard, 42 N.J.Law, 357; People's F. Ins. Co. v. Parker, 34 N.J.Law, 479, 35 N.J.Law, 575. See Earnings.

ACCUMULATIONS. Increase by continuous or repeated additions, or, if taken literally, means either profit accruing on sale of principal assets, or increase derived from their investment, or both. In re Wells' Will, 300 N.Y.S. 1075, 1078, 165 Misc. 385.

Adding of interest or income of a fund to principal pursuant to provisions of a will or deed, preventing its being expended. In re Watson's Will, 258 N.Y.S. 755, 144 Misc. 213.

When an executor or other trustee masses the rents, dividends, and other income which he receives, treats it as a capital, invests it, makes a new capital of the income derived therefrom, invests that, and so on, he is said to accumulate the fund, and the capital and accrued income thus procured constitute *accumulations*. Hussey v. Sargent, 116 Ky. 53, 75 S.W. 211, In re Rogers' Estate, 179 Pa. 609, 36 A. 340. See Perpetuity.

ACCUMULATIVE. That which accumulates, or is heaped up; additional. Said of several things heaped together, or of one thing added to another.

ACCUMULATIVE JUDGMENT. Where a person has already been convicted and sentenced, and a second or additional judgment is passed against him, the execution of which is postponed until the completion of the first sentence, such second judgment is said to be *accumulative.*

As to accumulative "Legacy," see that title.

ACCUMULATIVE LEGACY. A second, double or additional legacy; a legacy given in addition to another given by the same instrument, or by another instrument.

ACCUMULATIVE SENTENCE. A sentence, additional to others, imposed on a defendant who has been convicted upon an indictment containing several counts, each of such counts charging a distinct offense, or who is under conviction at the same time for several distinct offenses; one of such sentences to begin at the expiration of another. Carter v. Mclaughry, 183 U.S. 365, 22 S. Ct. 181, 46 L.Ed. 236; State v. Hamby, 126 N.C. 1066, 35 S.E. 614; Braudon v. Mackey, 122 Kan. 207, 251 P. 176, 177.

ACCUSARE NEMO SE DEBET, NISI CORAM DEO. No one is bound to accuse himself, except before God. See Hardres, 139.

ACCUSATION. A formal charge against a person, to the effect that he is guilty of a punishable offense, laid before a court or magistrate having jurisdiction to inquire into the alleged crime. Coplon v. State, 15 Ala.App. 331, 73 So. 225, 228. See Accuse.

"Accusation" is equivalent of "information" at common law which is mere allegation of prosecuting officer by whom it is preferred. Sutton v. State, 54 Ga.App. 349, 188 S.E. 60, 62.

ACCUSATOR POST RATIONABILE TEMPUS NON EST AUDIENDUS, NISI SE BENE DE OMISSIONE EXCUSAVERIT. Moore, 817. An accuser ought not to be heard after the expiration.

of a reasonable time, unless he can account satisfactorily for the delay.

ACCUSATORY PART. The "accusatory part" of an indictment is that part where the offense is named. Deaton v. Commonwealth, 220 Ky. 343, 295 S.W. 167, 168.

ACCUSE. To bring a formal charge against a person, to the effecf that he is guilty of a crime or punishable offense, before a court or magistrate having jurisdiction to inquire into the alleged crime. People v. Frey, 112 Mich. 251, 70 N W. 548.

In its popular sense "accusation" applies to all derogatory charges or imputations, whether or not they relate to a punishable legal offense, and however made, whether orally, by newspaper, or otherwise. People v. Braman, 30 Mich. 460. But in legal phraseology, it is limited to such accusations as have taken shape in a prosecution. United States v. Patterson, 150 U.S. 65, 14 S.Ct. 20, 37 L.Ed. 999.

ACCUSED. "Accused" is the generic name for the defendant in a criminal case, and is more appropriate than either "prisoner" or "defendant." 1 Car. & K. 131.

The person against whom an accusation is made; one who is charged with a crime or misdemeanor. See People v. Braman, 30 Mich. 468. The term cannot be said to apply to a defendant in a civil action; Castle v. Houston, 19 Kan. 417, 37 Am.Rep. 127; and see Mosby v. Ins. Co., 31 Gratt. (Va.) 629.

ACCUSER. The person by whom an accusation is made.

ACCUSTOMED. Habitual; often used; synonymous with usual; Farwell v. Smith, 16 N.J.Law, 133.

ACEPHALI. The levelers in the reign of Hen. who acknowledged no head or superior. Leges H. 1; Cowell. Also certain ancient heretics, who appeared about the beginning of the sixth century, and asserted that there was but one substance in Christ, and one nature. Wharton; Gibbon, Rom. Emp. ch. 47.

ACEQUIA. A ditch, channel, or canal, through which water, diverted from its natural course, is conducted, for use in irrigation or other purposes; public ditches. Comp.L.N.Mex. tit. 1, c. 1, § 6 (Comp.St.1929, §1 151-401).

ACHAT, also ACHATE, ACHATA, ACHET. In French law. A purchase or bargain. Cowell.

It is used in some of our law-books, as well as *achetor,* a purchaser, which in some ancient statutes means purveyor. Stat. 36 Edw. III; Merlin, Rdpert.

ACHERSET. In old English law. A measure of grain, conjectured to have been the same with our quarter, or eight bushels. Cowell.

ACHIEVE SUBJECT MATTER. The English equivalent for patentability. Mesta Mach. Co. v. Federal Machine & Welder Co., C.C.A.Pa., 110 F. 2d 479, 480.

ACKNOWLEDGE. To own, avow, or admit; to confess; to recognize one's acts, and assume the responsibility therefor.

ACKNOWLEDGMENT. To "acknowledge" is to admit, affirm, declare, testify, avow, confess, or own as genuine. Favello v. Bank of America Nat. Trust & Savings Ass'n, 24 Cal.App.2d 342, 74 P.2d 1057, 1058.

Child

An avowal or admission that the child is one's own; recognition of a parental relation, either by a written agreement, verbal declarations or statements, by the life, acts, and conduct of the parties, or any other satisfactory evidence that the relation was recognized and admitted. In re Spencer, Sur., 4 N.Y.S. 395; In re Hunt's Estate, 33 N.Y.S. 256, 86 Hun, 232.

Parents formally acknowledged child during ceremony in which both marriage and baptism took place. Cormier v. Cormier, 185 La. 968, 171 So. 93, 97, 98. Letter to registrar of college where child was student. In re Horne's Estate, 149 Fla. 710, 7 So.2d 13, 16.

The "public acknowledgment" of paternity, under Civ. Code Cal. § 230, is the opposite of private acknowledgment, and means the same kind of acknowledgment a father would make of his legitimate child. In re Baird's Estate, 193 Cal. 225, 223 P. 974, 994.

Generally

Implying obligation or incurring responsibility. Weyerhaeuser Timber Co. v. Marshall, C.C.A. Wash., 102 F.2d 78, 81.

Act of a person who avows or admits the truth of certain facts which, if established, will entail a civil liability upon him. Thus, the debtor's *acknowledgment* of the creditor's demand or right of action will toll the statute of limitations. Ft. Scott v. Hickman, 112 U.S. 150, 163, 5 Sup.Ct. 56, 28 L.Ed. 636; Letters, Leffek v. Luedeman, 95 Mont. 457, 27 P.2d 511, 91 A.L.R. 286; Lincoln-Alliance Bank & Trust Co. v. Fisher, 286 N.Y.S. 722, 247 App.Div. 465; payments, Erskine v. Upham, 56 Cal.App.2d 235, 132 P.2d 219, 224, 225. McMahan v. Dorchester Fertilizer Co., 184 Md. 155, 40 A.2d 313, 314.

Testator's statement to attesting witness. Anthony v. College of the Ozarks, 207 Ark. 212, 180 S.W.2d 321, 324.

Instruments

Formal declaration before authorized official, by person who executed instrument, that it is his free act and deed. Jemison v. Howell, 161 So. 806, 230 Ala. 423, 99 A.L.R. 1511. The certificate of the officer on such instrument that it has been so acknowledged. Williford v. Davis, 106 Okl. 208, 232 P. 828, 831.

Money

A sum paid in some parts of England by copyhold tenants on the death of their lords, as a recognition of their new lords, in like manner as money is usually paid on the attornment of tenants. Called a fine by Blackstone; 2 Bla.Com. 98.

Separate Acknowledgment

An acknowledgment of a deed or other instrument, made by a married woman, on her examination by the officer separate and apart from her husband. Hutchinson v. Stone, 79 Fla. 157, 84 So. 151, 154.

ACOLYTE. An inferior church servant, who, next under the sub-deacon, follows *and* waits upon the priests and deacons, and performs the offices

of lighting the candles, carrying the bread and wine, and paying other servile attendance. Spelman; Cowell,

ACQUAINTED. Having personal knowledge of. Kelly v. Calhoun, 95 U.S. 710, 24 L.Ed. 544. Acquaintance expresses less than familiarity; In re Carpenter's Estate, 94 Cal. 406, 29 P. 1101. It is "familiar knowledge"; Wyllis v. Haun, 47 Iowa, 614; Chauvin v. Wagner, 18 Mo. 531.

"Acquaintance" expresses less than familiarity; familiarity less than intimacy. Acquaintance springs from occasional intercourse, familiarity from daily intercourse, intimacy from unreserved intercourse; acquaintance, having some knowledge, familiarity, from long habit, intimacy, by close connection. Atkins Corporation *v.* Tourny, 6 Ca1.2d 206, 57 P.2d 480, 483. To be "personally acquainted with," and to "know personally," are equivalent terms; Kelly v. Calhoun, 95 U.S. 710, 24 L.Ed. 544. When used with reference to a paper to which a certificate or affidavit is attached, it indicates a substantial knowledge of the subject-matter thereof. Bohan v. Casey, 5 Mo. App. 101.

ACQUEREUR. In French and Canadian law. One who acquires title, particularly to immovable property, by purchase.

ACQUEST. An estate acquired newly, or by purchase. 1 Reeve, Eng.Law, 56.

ACQUITS. In the civil law. Property which has been acquired by purchase, gift, or otherwise than by succession. Immovable property which has been acquired otherwise than by succession. Merl. Repert.

Profits or gains of property, as between husband and wife. Civil Code La. art. 2402. The profits of all the effects of which the husband has the administration and enjoyment, either of right or in fact, of the produce of the joint industry of both husband and wife, and of the estates which they may acquire during the marriage, either by donations made jointly to them both, or by purchase, or in any other similar way, even though the purchase be only in the name of one of the two, and not of both. See Community; Conquêts.

ACQUIESCE. To give an implied consent to a transaction, to the accrual of a right, or to any act, by one's mere silence, or without express assent or acknowledgment., Scott v. Jackson, 89 Cal. 258, 26 P. 898.

ACQUIESCENCE. Conduct recognizing the existence of a transaction, and intended, in some extent at least, to carry the transaction, or permit it to be carried, into effect; it is some act, not deliberately intended to ratify a former transaction known to be voidable, but recognizing the transaction as existing, and intended, in some extent at least, to carry it into effect, and to obtain or claim the benefits resulting from it, and thus differs from "confirmation," which implies a deliberate act, intended to renew and ratify a transaction known to be voidable. De Boe v. Prentice Packing & Storage Co., 172 Wash. 514, 20 P.2d 1107, 1110.

Passive compliance or satisfaction ; distinguished from avowed consent on the one hand, and, on the other, from opposition or open discontent. Paul v. Western Distributing Co., 142 Kan. 816, 52 P.2d 379, 387. Acquiescence from which assent: may be reasonably inferred. Frank v. Wilson & Co., 24 Del.Ch. 237, 9 A.2d 82, 86. Equivalent to assent inferred from silence with knowledge or from encouragement and presupposes knowledge and assent. Andrew v. Rivers, 207 Iowa 343, 223 N.W. 102, 105. Imports tacit consent, concurrence, acceptance or assent. Natural Soda Products Co. v. City of Los Angeles, Cal.App., 132 P.2d 553, 563. A silent appearance of consent. Worcester, Diet. Darnell v. Bidwell, 115 Me. 227, 98 A. 743, 745, 5 A.L.R. 1320. Failure to make any objections. Scott v. Jackson, 89 Cal. 258, 26 P. 898. Submission to an act of which one had knowledge. See Pence v. Langdon, 99 U.S. 578, 25 L.Ed. 420. It imports full knowledge. Rabe v. Dunlap, 51 N.J.Eq. 40, 25 A. 959. Knowledge without objection. Indiana Harbor Belt R. Co. v. Jones, 220 Ind. 139, 41 N.E.2d 361, 363.

It is to be distinguished from avowed consent, on the one hand, and from open discontent or opposition, on the other.

It arises where a person who knows that he is entitled to impeach a transaction or enforce a right neglects to do so for such a length of time that, under the circumstances of the case, the other party may fairly infer that he has waived or abandoned his right. Norfolk & W. R. Co. v. Perdue, 40 W.Va. 442, 21 S.E. 755.

*Acquiescence* and *laches* are cognate but not equivalent terms. The former is a submission to, or resting satisfied with, an existing state of things, while laches implies a neglect to do that which the party ought to do for his own benefit or protection. Hence laches may be evidence of acquiescence. Laches Imports a merely passive assent, while acquiescence implies active assent. In re Wilbur's Estate, 334 Pa. 45, 5 A.2d 325, 331. "Acquiescence" relates to inaction during performance of an act while "inches" relates to delay after act is done. Bay Newfoundland Co. v. Wilson & Co., 24 Del.Ch. 30, 4 A.2d 668, 671, 673. "Acquiescence" is synonymous with "abandonment" ; Sclawr v. City of St. Paul, 132 Minn. 238, 156 N.W. 283, 284, and is distinguished from "admission" ; Saunders v. Busch-Everett Co., 138 La. 1049, 71 So. 153, 154; and from "ratification" and "estoppel in pais" ; Marion Sa$^{y}$. Bank v. Leahy, 200 Iowa 220, 204 N.W. 456, 458; but see Murray v. Smith, 152 N.Y:S. 102, 108, 166 App.Div. 528; differs from "confirmation", in that confirmation implies a deliberate act, intended to renew and ratify a transaction known to be voidable, Bauer v. Dotterer, 202 Ark. 1055, 155 S.W.2d 54, 57. A form of "equitable estoppel", Schmitt v. Wright, 317 Ill.App. 384, 46 N.E.2d 184, 192.

See Admission; Confession; Ratification,

ACQUIESCENCE, ESTOPPEL BY. Acquiescence is a species of estoppel. Bankers' Trust Co. v. Rood, 211 Iowa, 289, 233 N.W. 794, 802, 73 A.L.R. 1421.

An estoppel arises where party aware of his rights sees other party acting upon mistaken notion of his rights. Minear v. Keith Furnace Co., Iowa, 239 N.W. 584, 587. Injury accruing from one's acquiescence in another's action to his prejudice creates "estoppel". Lebold *v.* Inland Steel Co., C.C.A.I11., 125 F.2d 369, 375; Passive conduct on the part of one who has knowledge of the facts may be basis of estoppel. Winslow v. Burns, 47 N.M. 29, 132 P.2d 1048, 1050.

It must appear that party to be estopped was bound in equity and good conscience to speak and that party claiming estoppel relied upon acquiescence and was misled thereby to change his position to his prejudice. Sherlock v. Greaves, 106 Mont. 206, 76 P.2d 87, 91.

Acquiescence in a judgment in order to constitute an estoppel must be unqualified. Messer v. Henlein, 72 N.D. 63, 4 N.W.2d 587, 589. One who stands by while his property is sold is "estopped" from setting up title against purchaser. Meadows v. Hampton Live Stock Commission Co., 55 Cal.App.2d 634, 131 P.2d 591, 592, 593.

The doctrine is applicable only where there is some element of turpitude or neglect. City of Lafayette v. Keen, 113 Ind. App. 552, 48 N.E.2d 63, 70.

ACQUIETANDIS PLEGIIS. A writ of justices, formerly lying for the surety against a creditor who refuses to acquit him after the debt has been satisfied. Reg. of Writs 158; Cowell; Blount.

ACQUIRE. To gain by any means, usually by one's own exertions; to get as one's own; to obtain by search, endeavor, practice, or purchase; receive or gain in whatever manner; come to have. Clarno v. Gamble-Robinson Co., 190 Minn. 256, 251 N.W. 268, 269.

In law of contracts and of descents, to become owner of property; to make property one's own. Crutchfield v. Johnson & Latimer, 243 Ala. 73, 8 So.2d 412. To gain ownership of. Commissioner of Insurance v. Broad Street Mut. Casualty Ins. Co., 312 Mass. 261, 44 N.E.2d 683, 684. Broad meaning including both purchase and construction; acquisition being the act of getting or obtaining something which may be already in existence, or may be brought into existence through means employed to acquire it. Ronnow v. City of Las Vegas, 57 Nev. 332, 65 P.2d 133, 140. Sometimes used in the sense of "procure," Jolly v. McCoy, 36 Cal.App. 479, 172 P. 618, 619. It does not necessarily mean that title has passed, Godwin v. Tuttle, 70 Or. 424, 141 P. 1120, 1122. Includes taking by devise, U. S. v. Merriam, 263 U.S. 179. 44 S.Ct. 69, 70 68 L.Ed. 240, 29 A. L. R. 1547.

ACQUIRED. To get, procure, secure, acquire. Jones v. State, 126 Tex.Cr.R. 469, 72 S.W.2d 260, 263.

Coming to an intestate in any other way than by gift, devise, or descent from a parent or the ancestor of a parent. In re Miller's Will, 2 Lea (Tenn.) 54.

ACQUIRED RIGHTS. Those which a man does not naturally enjoy, but which are owing to his own procurement, as sovereignty, or the right of commanding, or the right of property. Borden v. State, 11 Ark. 519, 527, 44 Am.Dec. 217.

ACQUIRER TAX. German estate inheritance legacy tax, not true inheritance or legacy tax, imposed upon recipient, and not affecting executors. In re Gotthelf's Will, 273 N.Y.S. 247, 152 Misc. 309.

ACQUISITION. The act of becoming the owner of certain property; the act by which one acquires or procures the property in anything. State ex rel. Fisher v. Sherman, 135 Ohio St. 458, 21 N. E.2d 467, 470. Used also of the thing acquired. Hartigan v. City of Los Angeles, 170 Cal. 313, 149 P. 590, 592. Taking with, or against, consent. Scribner v. Wikstrom, 93 N.H. 17, 34 A.2d 658, 660. Especially a material possession obtained by any means. Jones v. State, 126 Tex.Cr.R. 469, 72 S.W.2d 260, 263.

*Original acquisition* is that by which a man secures a property in a thing which is not at the time he acquires it, and in its then existing condition, the property of any other individual. It may result from occupancy; 2 Kent, 289; accession; 2 Kent, 293; intellectual labor—namely, for inventions, which are secured by patent rights; and for the authorship of books, maps, and charts, which is protected by copyrights; 1 Bouv.Inst. 508, n.

*Derivative acquisitions* are those which are procured from others. Goods and chattels may change owners by act of law in the cases of forfeiture, succession, marriage, judgment, insolvency, and intestacy; or by act of the parties, as by gift or sale.

An acquisition may result from the act of the party himself, or those who are in his power acting for him, as his children while minors; Gale v. Parrot, 1 N.H. 28. See Dig. 41. 1. 53; Inst. 2. 9. 3.

See Accession.

ACQUIT. To set free, release or discharge as from an obligation, burden or accusation. Commonwealth v. Benson, 94 Pa.Super. 10, 15. To absolve, one from an obligation or a liability; or to legally certify the innocence of one charged with crime. Dolloway v. Turrill, 26 Wend.N.Y. 383, 400.

ACQUIT A CAUTION. The certificate proving receipt of security that goods shipped from one French port to another shall not be sent to a foreign country. Argles, Fr.Merc.Law, 543.

ACQUIT BACK. In mineral deed, vested in the grantee the title to such mineral rights as grantor had at time of execution of deed, where grantor had received his title from grantee and the expression was intended to reconvey such title. Allen v. Boykin, 199 Miss. 417, 24 So.2d 748, 750.

ACQUITMENT. See Absolution,

ACQUITTAL.

Contracts

A release, absolution, or discharge from an obligation, liability, or engagement.

According to Lord Coke, there are three kinds of acquittal, namely : by deed, when the party releases the obligation; by prescription; by tenure; Co. Litt. 100 a.

Crimes

The legal and formal certification of the innocence of a person who has been charged with crime; a deliverance or setting free a person from a charge of guilt.

In a narrow sense, it is the absolution of a party accused on a trial before a traverse jury. Thomas v. De Graffenreid, 2 Nott & McC. (S. C.) 143. Properly speaking, however, one is not acquitted by the jury but by the judgment of the court. People v. Rogers, 170 N.Y.S. 86, 87, 102 Misc. 437. And he may be legally acquitted by a judgment rendered otherwise than in pursuance of a verdict, as where he is discharged by a magistrate because of the insufficiency of the evidence, or the indictment is dismissed by the court or a nol. pros. entered. State v. Hart, 90 N.J. Law 261, 101 A. 278. But. compare State v. Smith, 170 N.C. 742; 87 S.E. 98, 99.

"Nol. pros." not equivalent of "acquittal." Bolton v. State, 166 Miss. 290, 146 So. 453, 454. The unnecessary discharge of the jury without the consent of the accused after it has been sworn may constitute an acquittal. Riley v. Commonwealth, 190 Ky. 204, 227 S. W. 146, 147. Acquittal discharges from guilt, pardon only from punishment. Younger v. State, 2 W.Va. 579, 98 Am.Dec. 791.

It may occur even though the question of guilt or innocence has never been submitted to a jury, as where a defendant, having been held under an indictment or information, is discharged because not brought to trial within the time provided by the Criminal Code. State v. Taylor, 130 Kan. 813, 288 P. 731, 732.

*Acquittals in fact* are those which take place when the jury, upon trial, finds a verdict of not guilty.

*Acquittals in law* are those which take place by mere operation of law; as where a man has been charged merely as an assessory, and the principal has been acquitted. 2 Co.Inst. 364. Ccmpare State v. Walton, 186 N.C. 485, 119 S.E. 886, 888.

See Jeopardy; Autrefois Acquit; Convict.

Feudal Law

The obligation on the part of a mesne lord to protect his tenant from any claims, entries or molestations by lords paramount arising out of the services due to them by the mesne lord. See Co.Litt. 100a.

ACQUITTANCE. A written discharge, whereby one is freed from an obligation to pay money or perform a duty. It differs from a *release* in not requiring to be under seal. Pothier, Oblig. n. 781. See Milliken v. Brown, 1 Rawle (Pa.) 391.

This word, though perhaps not strictly speaking synonymous with "receipt," includes it. A receipt is one form of an acquittance; a discharge is another. A receipt in full is an acquittance, and a receipt for a part of a demand or obligation is an acquittance pro *tanto.* State v. Shelters, 51 Vt. 104, 31 Am.Rep. 679.

ACQUITTED. Released; absolved; purged of an accusation; judicially discharged from accusation; released from debt, etc. Includes both civil and criminal prosecutions. Dolloway v. Turrill, 26 Wend. (N.Y.) 383, 399. See Acquittal.

ACRE. A quantity of land containing 160 square rods of land, in whatever shape. Serg. Land Laws Pa. 185; Cro.Eliz. 476, 665; 6 Coke 67; Poph. 55; Co.Litt. 5b.

Originally the word "acre" *(acer, aker,* or Sax, *cecer)* was not used as a measure of land, or to signify any determinate quantity of land, but to denote any open ground, *(latum quantumvis agrum,)* wide champaign, or field; which is still the meaning of the German *acker,* derived probably from the same source, and is preserved in the names of some places in England, as Castle Acre, South Acre, etc. Burrill. Originally a strip in the fields that was ploughed in the forenoon. Maitland, Domesday and Beyond, 387.

ACRE FOOT. 325,850 gallons, or the amount of water which will cover one acre one foot in depth. Rowles v. Hadden, Tex.Civ.App., 210 S.W. 251, 258.

ACRE RIGHT. "The share of a citizen of a New England town in the common lands. The value of the acre right was a fixed quantity in each town, but varied in different towns. A 10-acre lot or right in a certain town was equivalent to 113 acres of upland and 12 acres of meadow, and a certain exact proportion was maintained between the acre right and salable lands." Messages, etc., of the Presidents, Richardson, X, 230.

ACREFIGHT, or ACRE. A camp or field fight; a sort of duel, or judicial combat, anciently fought by single combatants, English and Scotch, between the frontiers of the two kingdoms with sword and lance. Called "campfight," and the combatants "champions," from the open "acre" or *field* that was the stage of trial. Cowell.

ACROMIAL PROCESS. A point in the region of the shoulder about where the arm joins or fits into the shoulder *blade.* Muskogee Electric Traction Co. v. Mueller, 39 Okl. 63, 134 P. 51, 52.

ACROSS. From side to side. Transverse to the length of. Hannibal & St. J. R. Co. v. Packet Co., 8 S.Ct. 874, 125 U.S. 260, 31 L.Ed. 731; but see Appeal of Bennett's Branch Imp. Co., 65 Pa. 242. It may mean over, Brown v. Meady, 10 Me. 391, 25 Am.Dec. 248; or "upon and along," Mt. Vernon Telephone Co. v. Franklin Farmers' Co-op. Telephone Co., 113 Me. 46, 92 A. 934, 935, Ann.Cas. 1917B, 649; or "upon," Jefferson County v. Louisville & I. R. Co., 160 S.W. 502, 504, 155 Ky. 810; or "within," Quanah, A. & P. Ry. Co. v. Cooper, Tex.Civ.App., 236 S.W. 811, 812. See Comstock v. Van Deusen, 5 Pick. (Mass.) 163, where a grant of a right of way *across* a lot of land was held not to mean a right to enter at one side, go partly across and come out at a place on the same side. And compare Brooklyn Heights R. Co. v. Steers, 106 N.E. 919, 920, 213 N.Y. 76; but see Holley v. State, 9 Ala.App. 33, 63 So. 738.

ACT, v. In Scotch practice. To do or perform judicially; to enter of record. Surety "acted in the Books of Adjournal." 1 Broun, 4.

ACT, n. Denotes affirmative; expression of will, purpose; carries idea of performance; primarily that which is done or doing; exercise of power, or effect of which power exerted is cause; a performance; a deed. Brown v. Standard Casket Mfg.*Co., 234 Ala. 512, 175 So. 358, 364.

In its most general sense, this noun signifies something done voluntarily by a person; the exercise of an individual's power ; an effect produced in the external world by an exercise of the power of a person objectively, prompted by intention, and proximately caused by a motion of the will. Herman v. Pan American Life Ins. Co., 183 La. 1045, 165 So. 195, 200. In a more technical sense, it means something done voluntarily by a person, aria of such a nature that certain legal consequences attach to it. Jefferson Standard Life Ins. Co. v. Myers, Tex.Com.App., 284 S.W. 216, 218. Thus a grantor acknowledges the conveyance to be his *"act* and deed," the terms being synonymous. It May denote something done by an individual, as a private citizen, or as an officer ; or by a body of men, as a legislature, a council, or a court of justice; including not merely physical acts, but also decrees, edicts, laws, judgments, resolves, awards, and determinations. Some general laws made by the Congress of the United States are styled joint resolutions, and these have the same force and effect as those styled acts. But see Decher v. Vaughan, 209 Mich. 565, 177 N.W. 388, 392. Carries idea of performance. Edmonds v. Shirley, 22 Ala.App. 398, 116 So. 303.

An instrument in writing to verify facts. Webster, Dict.

It is used in this sense of the published acts of assembly, congress, etc. In a sense approaching this, it has been held in trials for treason that letters and other written documents were *acts;* 1 Fost.Cr.Cas. 198; 2 Stark. 116.

Act indicates the intention. 8 Co. 146b; Broom, Max. 301.

### Civil Law

An *act* is a writing which states in a legal form that a thing has been said, done, or agreed. Merl. Repert.

*Acts under private signature* are those which have been made by private individuals under their hands.

*Private acts* are those made by private persons as registers in relation to their receipts and expenditures, schedules, acquittances, and the like.

*Public acts* are those which have a public authority, and which have been made before public officers, are authorized by a public seal, have been made public by the authority of a magistrate, or which have been extracted and been properly authenticated from public records.

### Legislation

A written law, formally ordained or passed by the legislative power of a state, called in England an "act of parliament," and in the United States an "act of congress," or of the "legislature;" a statute. People v. Tiphaine, 3 Parker, Cr.R. (N. Y.) 241; United States v. Smith, 27 Fed.Cas. 1167.

The words bill and law are frequently used synonymously with *act,* People v. City of Buffalo, 161 N.Y.S. 706, 712, 175 App.Div. 218, but incorrectly; Sedgwick County Com'rs v. Bailey, 13 Kan. 600; a bill being only the draft or form of the act presented to the legislature but not enacted; Southwark Bank v. Corn., 26 Pa. 446. "Act" does not include ordinances or regulations made by local authorities, or even statutes having only a local application; People v. City of Buffalo, 157 N.Y.S. 938, 940, 93 Misc. 275; although sometimes used interchangeably with "measure" and "law" ; Whittemore v. Terral, 140 Ark. 493, 215 S.W. 686, 687. Generally, the word refers to entire statute enacted, rather than to a section. Board of Trustees of Firemen's Relief and Pension Fund of City of Muskogee v. Templeton, 184 Okl. 281, 86 P.2d 1000, 1002.

Acts are either public or private. Public acts (also called general acts, or general statutes, or statutes at large) are those which relate to the community generally, or establish a universal rule for the governance of the whole body politic. Private acts (formerly called special, Co. Litt. 126a) are those which relate either to particular persons (personal acts) or to particular places (local acts), or which operate only upon specified individuals or their private concerns. Unity v. Burrage, 103 U.S. 454, 26 L.Ed. 465. Public acts are those which concern the whole community and of which courts of law are bound to take judicial notice. Sasser v. Martin, 101 Ga. 447, 29 S.E. 278.

A "special" or "private" act is one operating only on particular persons and private concerns; a "local act" is one applicable only to a particular part of the legislative jurisdiction. Trumper v. School Dist. No. 55 of Musselshell County, 55 Mont., 90, 173 P. 946, 947.

To denote an avowal of criminal acts, or the concession of the truth of a criminal charge, the word "confession" seems more appropriate.

### Practice

Anything done by a court and reduced to writing; a decree, judgment, resolve, rule, order, or other judicial proceeding. In Scotch law, the orders and decrees of a court, and in French and German law, all the records and documents in an action, are called "acts."

### Scotch Practice

An abbreviation of *actor,* (proctor or advocate, especially for a plaintiff or pursuer,) used in records. *"Act.* A. *Alt.* B." an abbreviation of *Actor,* A. *Alter,* B.; that is, for the pursuer or plaintiff, A., for the defender, B. 1 Broun, 336, note.

ACT BOOK. In Scotch practice. The minute book of a court. 1 Swin. 81.

ACT IN PAIS. An act done out of court, and not a matter of record. A deed or an assurance transacted between two or more private persons in the country, that is, according to the old common law, upon the very spot to be transferred, is matter *in pais.* 2 Bl.Comm. 294.

ACT OF ATTAINDER. A legislative act, attainting a person. See Attainder.

ACT OF BANKRUPTCY. Any act which renders a person liable to be proceeded against as a bankrupt, or for which he may be adjudged bankrupt.

These acts are usually defined and classified in statutes on the subject. Duncan v. Landis, C.C.A.Pa., 106 Fed. 839, 45 C.C.A. 666; In re Chapman, D.C., 99 Fed. 395. Such as: insolvency or suffering or permitting a creditor to obtain a preference, Von Segerlund v. Dysart, C.C.A.Cal., 137 F.2d 755, 758, 761; appointment of a receiver, United States v. Emory, 62 S.Ct. 317, 319, 314 U.S. 423, 86 L.Ed. 315; hindering, delaying or defrauding creditors, *In* re Thompson, D.C.La., 28 F.Supp. 707, 710; failure to discharge a lien, In re Flushing Queensboro Laundry, C.C.A.N.Y., 90 F.2d 601. Permitting creditor to obtain any levy, attachment, judgment, or other lien, In re Day, D.C.Md., 22 F.Supp. 946, 949; assignment for benefit of creditors, In re Roy, D.C.N.H., 46 F.Supp. 952, 954; or a written admission of one's inability to pay his debts, In re Turner, D.C.Ky., 51 F. Supp. 740, 743.

ACT OF CURATORY. In Scotch law. The act extracted by the clerk, upon any one's acceptance of being curator. Forb.Inst. pt. 1, b. 1, c. 2, tit. 2. 2 Kames, Eq. 291. Corresponding with the order for the appointment of a guardian, in English and American practice.

ACT OF ELIZABETH. See Act of Supremacy.

ACT OF GOD. An act occasioned exclusively by violence of nature without the interference of any human agency. It means a natural necessity proceeding from physical causes alone without the intervention of man. It is an act, event, happening, or occurrence, a disaster and effect due to natural causes and inevitable accident, or disaster; a natural and inevitable necessity which implies entire exclusion of all human agency which operates without interference or aid from man and which results from natural causes and is in no sense attributable to human agency. It is an accident which could not have been occasioned by human agency but proceeded from physical causes alone. Short v. Kerr, 104 Ind.App. 118, 9 N.E.2d 114, 118.

In the civil law, *vis major.* Any misadventure or casualty is said to be caused by the "act of God" when it happens by the direct, immediate, and exclusive operation of the forces of nature, uncontrolled or uninfluenced by the power of man and without human intervention, and is of such a character that it could not have been prevented or escaped from by any amount of foresight or prudence, or by any reasonable degree of care or dilligence, or by the aid of any appliances which the situation of the party might reasonably require him to use. Inevitable accident, or casualty; any accident produced by any physical cause which is irresistible, such as lightning, tempests, perils of the seas, an inundation, or earthquake; and also the sudden illness or death of persons. People v. Tubbs, 37 N.Y. 586; Central of Georgia Ry. Co. v. Hall, 124 Ga. 322, 52 S.E. 679, 4 L.R.A.,N.S., 898, 110 Am.St.Rep. 170, 4 Ann.Cas. 128. Story, Bailm. §§ 25, 511; 2 Bl.Comm. 122. Inevitable accident or casualty. Noel Bros. v. Texas & P. Ry. Co., 16 La.App. 622, 133 So. 830, 832; not preventable by human care, skill, or foresight, but resulting from natural causes, The Empress of France, D.C.N.Y., 49 F.2d 291. Misfortunes and accidents arising from inevitable necessity which human prudence could not foresee or prevent. Pleasure Beach Park Co. v. Bridgeport Dredge & Dock Co., 116 Conn. 496, 165 A. 691, 692. Limited, v. Lehigh Valley R. Co., D.C.N.Y., 254 F. 351, 353, a landside in the Panama Canal, Gans S. S. Line v. Wilhelmsen, C.C. A.N.Y., 275 F. 254, 261, and changes in the styles of wearing apparel, Rosenblatt v. Winstanley, Mo.App., 186 S.W. 542, 543, are not "acts of God" ; otherwise, however, as to a strike, accompanied with violence and intimidation, see Southern Cotton Oil Co. v. Louisville & N. R. Co., 15 Ga.App. 751, 84 S.E. 198, 199.

The term is sometimes defined as equivalent to inevitable accident; Neal v. Saunderson, 2 Sm. & M. (Miss.) 572, 41 Am.Dec. 609; Central of Georgia Ry. Co. v. Council Bros., 36 Ga.App. 573, 137 S.E. 569, 570 (see, however, Cannon v. Hunt, 113 Ga. 509, 38 S.E. 983; Harmony Grove Telephone Co. v. Potts, 24 Ga.App. 178, 100 S.E. 236, but incorrectly, as there is a distinction between the two; Alaska Coast Co. v. Alaska Barge Co., 79 Wash. 216, 140 P. 334, 335. Bolton v. Burnett, 5 Blackf. (Ind.) 222.

See Inevitable Accident; Perils of the Sea.

ACT OF GOVERNMENT. The usual name of Cromwell's Constitution vesting the supreme power in a Protector and two houses of Parliament, passed March 25, 1657.

ACT OF GRACE. In Scotch law. A term applied to the act of 1696, c. 32, by which it was provided that where a person imprisoned for a civil debt is so poor that he cannot aliment [maintain] himself, and will make oath to that effect, it shall be in the power of the magistrates to cause the creditor by whom he is incarcerated to provide an aliment for him, or consent to his liberation; which, if the creditor delay to do for 10 days, the magistrate is authorized to set the debtor at liberty. Bell. The term is often used to designate a general act of parliament, originating with the crown, such as has often been passed at the commencement of a new reign, or the coming of age or marriage of a sovereign, or at the close of a period of civil troubles, declaring pardon or amnesty to numerous offenders. Abbott.

ACT OF HONOR. When a bill has been protested, and a third person wishes to take it up, or accept it, for honor of one or more of the parties, the notary draws up an instrument, . evidencing the transaction, called by this name.

ACT OF INDEMNITY. A statute by which those who have committed illegal acts which subject them to penalties are protected from the consequences of such acts.

ACT OF INSOLVENCY. Within the meaning of the national currency act, an act which shows a bank to be insolvent, such as nonpayment of its circulating notes, bills of exchange, or certificates of deposit; failure to make good the impairment of capital, or to keep good its surplus or reserve; in fact, any act which shows that the bank is unable to meet its liabilities as they mature, or to perform those duties which the law imposes for the purpose of sustaining its credit. Hayden v. Chemical Nat. Bank, C.C.A.N.Y., 84 Fed. 874, 28 C.C.A. 548; Kullman & Co. v. Woolley, C.C.A. Miss., 83 F.2d 129, 132; Garvin v. Chadwick Realty Corporation, 212 Ind. 499, 9 N.E.2d 268, 271.

ACT OF LAW. The operation of fixed legal rules upon given facts or occurrences, producing consequences independent of the design or will of the parties concerned; as distinguished from "act of parties." Also an act performed by judicial authority which prevents or precludes a party from fulfilling a contract or other engagement. Metcalf v. State, 57 Okl. 64, 156 P. 305, 306, L.R.A. 1916E, 595.

ACT OF PARLIAMENT. A statute, law, or edict, made by the British sovereign, with the advice and consent of the lords spiritual and temporal, and the commons, in parliament assembled. Acts of parliament form the *leges scriptce, e.,* the written laws of the kingdom.

ACT OF PROVIDENCE. An accident against which ordinary skill and foresight could not guard. McCoy v. Dan/ey, 20 Pa. 91, 57 Am.Dec. 680. Equivalent to "act of God," see *supra.*

ACT OF SALE. In Louisiana law. An official record of a sale of property, made by a notary who writes down the agreement of the parties as stated by them, and which is then signed by the parties and attested by witnesses. Hodge v. Palms, Mich., 117 Fed. 396, 54 C.C.A. 570.

ACT OF SETTLEMENT. The statute (12 & 13 Wm. III, c. 2) limiting the crown to the Princess Sophia of Hanover, and to the heirs of her body being Protestants. 1 Bla.Com. 128; 2 Steph.Com. 290. One clause of it made the tenure of judges' office for life or good behavior independent of the crown.

ACT OF STATE. An act done by the sovereign power of a country, or by its delegate, within the limits of the power vested in him. An act of state cannot be questioned or made the subject of legal proceedings in a court of law.

ACT OF SUPREMACY. An act of 26 Hen. VIII. c. 1, and also 1 Eliz. c. 1, which recognized the king as the only supreme head on earth of the Church of England having full power to correct all errors, heresies, abuses, offenses, contempts and enormities. The oath, taken under the act, denies to the Pope any other authority than that of the Bishop of Rome.

ACT OF UNIFORMITY. In English law. The statute of 13 & 14 Car. II. c. 4, enacting that the book of common prayer, as then recently revised, should be used in every parish church and other place of public worship, and otherwise ordaining a uniformity in religious services, etc. 3 Steph. Comm. 104.

ACT OF UNION. The statutes uniting England and Wales, 27 Hen. VIII, c. 26, confirmed by 34 & 35 Hen. VIII, c. 26; England and Scotland, 5 Anne. c. 8; Great Britain and Ireland, 39 & 40 Geo. III, c. 67. 1 Bl.Comm. 97.

The act uniting the three lower counties (now Delaware) to the province of Pennsylvania, passed at Upland, Dec. 7, 1682, is so called.

ACT ON PETITION. A form of summary proceeding formerly in use in the high court of admiralty, in England, in which the parties stated their respective cases briefly, and supported their statements by affidavit. 2 Dod.Adm. 174, 184; 1 Hagg.Adm. 1, note.

ACTA DIURNA. Lat. In the Roman law. Daily acts or chronicles; the public registers or journals of the daily proceedings of the senate, assemblies of the people, courts of justice, etc. Supposed to have resembled a modern newspaper. Brande. Thus: I do not find the thing published in the *acta diurna* (daily records of affairs) ; Tacitus, Ann. 3, 3; Ainsworth, Lex.; Smith, Lex.

ACTA EXTERIORA INDICANT INTERIORA SECRETA. 8 Coke, 146b. External acts indicate undisclosed thoughts.

ACTA IN UNO JUDICIO NON PROBANT IN ALIO NISI INTER EASDEM PERSONAS. Things done in one action cannot be taken as evidence in another, unless it be between the same parties. Tray.Lat.Max. U.

ACTA PUBLICA. Lat. Things of general knowledge and concern; matters transacted before certain public officers. Calvinus, Lex.

ACTE. In French law, denotes a document, or formal, solemn writing, embodying a legal attestation that something has been done, corresponding to one sense or use of the English word "act."

*Actes de naissance* are the certificates of birth, and must contain the day, hour, and place of birth, together with the sex and intended christian name of the child, and the names of the parents and of the witnesses. *Actes de mariage* are the marriage certificates, and contain names, professions, ages, and places of birth and domicile of the two persons marrying, and of their parents ; also the consent of these latter, and the mutual agreements of the intended husband and wife to take each other for better and worse, together with the usual attestations. *Actes de décès* are the certificates of death, which are required to be drawn up before any one may be buried. *Les actes de l'etat civil* are public documents. Brown.

ACTE AUTHENTIQUE. A deed executed with certain prescribed formalities, in the presence of a notary, mayor, *greffier, huissier,* or other functionary qualified to act in the place in which it is drawn up. Argles, Fr.Merc.Law, 50.

ACTE DE FRANCISATION. The certificate of registration of a ship, by virtue of which its French nationality is established.

ACTE D'HERITIER. Act of inheritance. Any action or fact on the part of an heir which manifests his intention to accept the succession; the acceptance may be express or tacit. Duverger.

ACTE EXTRAJUDICIAIRE. A document served by a *huissier,* at the demand of one party upon another party, without legal proceedings.

ACTING. The word "acting" means doing duty for another; officiating; holding a temporary rank or position or performing services temporarily; as, an acting captain, manager, president. Pellecchia v. Mattia, 121 N.J.L. 21, 1 A.2d 28. Performing; operating. See Meyer v. Johnston, 64 Ala. 603, 665.

An acting trustee is one who takes upon himself to perform some or all of the trusts mentioned in a will. Sharp v. Sharp, 2 Barn. & Ald. 415.

ACTING OFFICER. The phrase "acting officer" is used to designate, not an appointed incumbent, but merely a locum tenens, who is performing the duties of an office to which he himself does not claim title. State ex rel. Gossett v. O'Grady, 137 Neb. 824, 291 N.W. 497, 501; State Bank of Williams v. Gish, 167 Iowa, 526, 149 N.W. 600, 601.

"*Acting* Supervising Architect." Fraser v. United States, 16 Ct.C1. 514. An acting executor is one who assumes to act as executor for a decedent, not being the executor legally appointed or the executor in fact. Morse v. Allen, 99 Mich. 303, 58 N.W. 327.

ACTIO. Lat. In the civil law. An action or suit; a right or cause of action. It should be noted that this term means both the proceeding to enforce a right in a court and the right itself which is sought to be enforced.

The first sense here given is the older one. Justinian, following Celsus, gives the well-known definition : *Actio nihil aliud est quam jus persequendi in judicio quod* sibi *debetur,* which may be thus rendered : An action is simply the *right* to enforce one's demands in a court of law. See Pollock, Expansion of C. L. 92.

ACTIO AD EXHIBENDUM. An action for the purpose of compelling a defendant to exhibit a thing or title in his power. It was preparatory to another action, which was always a real action in the sense of the Roman law; that is, for the recovery of a thing, whether it was movable or immovable. Merl.Quest.tome i, 84.

ACTIO JESTIMATORIA; ACTIO QUANTI MINOR'S. Two names of an action which lay in behalf of a buyer to reduce the contract price proportionately to the defects of the object, not to cancel the sale; the *judex* had power, however, to cancel the sale. Hunter, Rom.Law, 332, 505.

ACTIO ARBITRARIA. Action depending on the discretion of the judge. In this, unless defendant would make amends to plaintiff as dictated by the judge in his discretion, he was liable to be condemned. Hunter, Rom.Law, 825, 987.

ACTIO BONE FIDEI. (Lat.: An action of good faith.) A class of actions in which the judge might at the trial *ex officio,* take into account any equitable circumstances that were presented to him affecting either of the parties to the action. 1 Spence, Eq.Jur. 210, 218.

ACTIO CALUMNI1E. An action to restrain defendant from prosecuting a groundless proceeding or trumped-up charge against plaintiff. Hunter, Rom.Law, 859, 1020. An action for malicious prosecution. So.Afr.Leg.Dict.

ACTIO CIVILIS. In the common law. A civil action, as distinguished from a criminal action.

Bracton divides personal actions into *cri?rtinalia et civilia,* according as they grow out of crimes or contracts. Bract. fol. 101b. *Actiones civiles* are those forms of remedies which were established under the rigid system of the civil law, the *jus civilis.* See Actio Honoraria.

ACTIO COMMODATI. Included several actions appropriate to enforce the obligations of a borrower or a lender. Hunter, Rom.Law, 305.

ACTIO COMMODATI CONTRARIA. An action by the borrower against the lender, to compel the execution of the contract. Poth. *Pre't* a *Usage,* n. 75.

ACTIO COMMODATI DIRECTA. An action by a lender against a borrower, the principal object of which is to obtain a restitution of the thing lent. Poth. *Prét a Usage,* nn. 65, 68.

ACTIO COMMUNI DIVIDUNDO. An action to procure a judicial division of joint property. Hunter, Rom.Law, 194. It was analogous in its object to proceedings for partition in modern law.

ACTIO CONDICTIO INDEBITATI. An action by which the plaintiff recovers the amount of a sum of money or other thing he paid by mistake. Poth. Promutuum, n. 140; Merl. Repert.

ACTIO CONFESSORIA. An affirmative petitory action for the recognition and enforcement of a servitude. So called because based on plaintiff's affirmative allegation of a right in defendant's land. Distinguished from an *actio negatoria,* which was brought to repel a claim of defendant to a servitude in plaintiff's land. Mackeld. Rom. Law, § 324.

ACTIO CONTRARIO. Counter action or cross action.

ACTIO CRIMINALIS. Criminal action.

ACTIO DAMNI INJURIA. The name of a general class of actions for damages, including many species of suits for losses caused by wrongful or negligent acts. The term is about equivalent to our "action for damages."

ACTIO DE DOLO MALO. An action of fraud; an action which lay for a defrauded person against the defrauder and his heirs, who had been enriched by the fraud, to obtain the restitution of the thing of which he had been fraudulently deprived, with all its accessions *(cum* omni *causa;)* or, where this was not practicable, for compensation in damages. Mackeld.Rom.Law, § 227.

ACTIO DE PECULIO. An action concerning or against the *peculium,* or separate property of a party.

ACTIO DE PECUNIA CONSTITUTA. An action for money engaged to be paid ; an action which lay against any person who had engaged to pay money for himself, or for another without any formal stipulation. Inst. 4, 6, 9; Dig. 13, 5; Cod. 4, 18.

ACTIO DE TIGNO JUNCTO. An action by the the owner of material built by another into his building.

If so used in good faith double their value could be recovered; if in bad faith, the owner could recover suitable damage for the wrong, and recover the property when the building came down. So. Afr. Leg. Diet.

ACTIO DEPOSITI CONTRARIA. An action which the depositary has against the depositor, to compel him to fulfil his engagement towards him. Poth. *Du Depot,* n. 69.

ACTIO DEPOSIT! DIRECTA. An action which is brought by the depositor against the depositary, in order to get back the thing deposited. Poth. *Du Depot,* n. 60.

ACTIO DIRECTA. A direct action; an action founded on strict law, and conducted according to fixed forms; an action founded on certain legal obligations which from their origin were accurately defined and recognized as actionable. See Actio Utilis.

ACTIO EMPTI. An action employed in behalf of a buyer to compel a seller to perform his obligations or pay compensation; also to enforce any special agreements by him, embodied in a contract of sale. Hunter, Rom.Law, 332, 505.

ACTIO EX CONDUCTO. An action which the bailor of a thing for hire may bring against the bailee, in order to compel him to redeliver the thing hired.

ACTIO EX CONTRACTU. In the civil and common law. An action of contract; an action arising out of, or founded on, contract. 3 Bl.Comm. 117.

ACTIO EX DELICTO. In the civil and common law. An action of tort; an action arising out of fault, misconduct, or malfeasance. Inst. 4, 6, 15; 3 Bl.Comm. 117. *Ex male ficio* is the more common expression of the civil law; which is adopted by Bracton. Inst. 4, 6, 1; Bract. fols. 102, 103.

ACTIO EX LOCATO. An action upon letting; an action which the person who let a thing for hire to another might have against the hirer. Dig. 19, 2; Cod. 4, 65.

ACTIO EX STIPULATU. An action brought to enforce a stipulation.

ACTIO EXERCITORIA. An action against the *exercitor* or employer of a vessel.

ACTIO FAMILIZE ERCISCUNDIE. An action for the partition of an inheritance. Inst. 4, 6, 20; Id. 4, 17, 4. Called, by Bracton and Fleta, a mixed action, and classed among actions arising *ex quasi contractu.* Brac. fol. 10013; Bract. fols. 443 *b,* 444; Fleta, lib. 2, c. 60, § 1.

ACTIO FURTI. An action of theft; an action founded upon theft. Inst. 4, 1, 13-17; Bract. fol. 444. This could be brought only for the penalty attached to the offense, and not to recover the thing stolen, for which other actions were provided. Inst. 4, 1, 19. An appeal of larceny. The old process by which a thief can be pursued and the goods vindicated. 2 Holdsw.Hist.Eng.L. 202.

ACTIO HONORARIA. An honorary, or praetorian action. Dig. 44, 7, 25, 35. *Actiones honorarice* are those forms of remedies which were gradually introduced by the praetors and diles, by virtue of their equitable powers, in order to prevent the failure of justice which too often resulted from the employment of the *actiones civiles.* These were found so beneficial in practice that they eventually supplanted the old remedies, of which in the time of Justinian hardly a trace remained. Mackeldey, Civ.L. § 194; 5 Savigny, System.

ACTIO IN FACTUM. In action adapted to the particular case, having an analogy to some *actio in jus,* the latter being founded on some subsisting acknowledged law. 1 Spence, Eq.Jur. 212. The origin of these actions is similar to that of actions on the case at common law.

ACTIO IN PERSONAM.

Admiralty Law

An action directed against the particular person who is to be charged with the liability. It is distinguished from an *actio in rem,* which is a suit directed against a specific *thing* (as a vessel) irrespective of the ownership of it, to enforce a claim or lien upon it, or to obtain, out of the thing or out of the proceeds of its sale, satisfaction for an injury alleged by the claimant.

Civil Law

An action against the person, founded on a personal liability; an action seeking redress for the violation of a *jus in personam* or right available against a particular individual.

ACTIO IN REM. In the civil and common law. An action *for a thing;* an action for the recovery of a thing possessed by another. Inst. 4, 6, 1. An action for the enforcement of a right (or for redress for its invasion) which was originally available against all the world, and not in any special sense against the individual sued, until he violated it. See In Rem.

ACTIO JUDICATI. An action instituted, after four months had elapsed after the rendition of judgment, in which the judge issued his warrant to seize, first, the movables, which were sold within eight days afterwards; and then the immovables, which were delivered in pledge to the creditors, or put under the care of a curator, and if, at the end of two months, the debt was not paid, the land was sold. Dig. 42, 1; Cod. 8, 34.

According to some authorities, if the defendant then utterly denied the rendition of the former judgment, the plaintiff was driven to a new action, conducted like any other action, which was called *actio judicati,* and which had for its object the determination of the question whether such a judgment had been rendered. The exact meaning of the term is by no means clear. See Savigny, Syst. 305, 411; 3 Ortolan, Just. § 2033.

ACTIO LEGIS AQUILINE. An action under the Aquilian law; an action to recover damages for maliciously or injuriously killing or wounding the slave or beast of another, or injuring in any way a thing belonging to another. Otherwise called *damni injurice actio.*

ACTIO MANDATI. Included actions to enforce contracts of mandate or obligations arising out of them. Hunter, Rom.Law, 316.

ACTIO MIXTA. A mixed action; an action brought for the recovery of a thing, or compensation for damages, and also for the payment of a penalty; partaking of the nature both of an *actio in rem* and *in personam.* Inst. 4, 6, 16, 18, 19, 20; Mackeld.Rom.Law, § 209.

ACTIO NEGATORIA (or NEGATIVA). An action brought to repel a claim of the defendant to a servitude in the plaintiff's land. Mackeld.Rom. Law, § 324. See Actio Confessoria.

ACTIO NEGOTIORUM GESTORUM. Included actions between principal and agent and other parties to an engagement, whereby one person undertook the transaction of business for another.

ACTIO NON. In pleading. The Latin name of that part of a special plea which follows next after the statement of appearance and defense, and declares that the plaintiff "ought not to have or maintain his aforesaid action thereof against" the defendant (in Latin, *actionem non habere debet).* 1 Chit.Plead. 531; 2 *id.* 421; Stephens, Plead. 394.

ACTIO NON ACCREVIT INFRA SEX ANNOS. The name of the plea of the statute of limitations, when the defendant alleges that the plaintiff's action has not accrued within six years.

ACTIO NON DATUR NON DAMNIFICATO. An action is not given to one who is not injured. Jenk.Cent. 69.

ACTIO NON FACIT REUM, NISI MENS SIT REA. An act does not make one guilty, unless the intention be bad. Lofft, 37.

ACTIO NON ULTERIUS. In English pleading. A name given to the distinctive clause in the plea to the *further maintenance* of the action, introduced in place of the plea *puis darrein continuance;* the averment being that the plaintiff ought not *further (ulterius)* to have or maintain his action. Steph.Pl. 64, 65, 401.

ACTIO NOXALIS. A noxal action; an action which lay against a master for a crime committed or injury done by his slave; and in which the master had the alternative either to pay for the damage done or to deliver up the slave to the complaining party. Inst. 4, 8, pr.; Heinecc.Elem. lib. 4, tit. 8. So called from *noxa,* the offense or injury committed. Inst. 4, 8, 1.

ACTIO PERPETUA. An action without limitation period.

ACTIO PERSONALIS. In the civil and common law. A personal action.

The ordinary term for this kind of action in the civil law is *actio in personam, (q. v.,)* the word *personalis* being of only occasional occurrence. Inst. 4, 6, 8, *in tit.;* Id. 4, 11, pr. 1. Bracton, however, uses it freely, and hence the *personal action* of the common law. Bract. fols. 102a, 159b. See Action.

ACTIO PERSONALIS MORITUR CUM PERSONA. A personal right of action dies with the person. Noy, Max. 14.

The maxim was originally applied to almost every form of action, whether arising out of contract or tort, but the common law was modified by the Statute of 4 Edward the III. Momand v. Twentieth-Century Fox Film Corporation, D.C.Okl., 37 F.Supp. 649, 652.

ACTIO PIGNORATITIA. An action of pledge; an action founded on the contract of pledge *(pignus).* Dig. 13, 7; Cod. 4, 24.

ACTIO PCENALIS. Called also *actio ex delicto.* An action in which a penalty was recovered of the delinquent.

*Actiones pcenales* and *actiones mixtce* comprehended cases of injuries, for which the civil law permitted redress

by private action, but which modern civilization universally regards as crimes; that is, offenses against society at large, and punished by proceedings in the name of the state alone. Thus, theft, receiving stolen goods, robbery, malicious mischief, and the murder or negligent homicide of a slave (in which case an injury to property was involved), gave rise to private actions for damages against the delinquent. Inst. 4, 1. *De obligationibus quce ex delicto nascuntur; id.* 2. *De bonis vi raptis; id.* 3. *De lege Aquilia.* And see Mackeldey, Civ.L. § 196; 5 Savigny, System, § 210.

Actio pcenalis in haredem non datur, nisi forte ex damno locupletior hares factus sit. A penal action is not given against an heir, unless, indeed, such heir is benefited by the wrong.

ACTIO PRIEJUDICIALIS. A preliminary or preparatory action. An action instituted for the determination of some preliminary matter on which other litigated matters depend, or for the determination of some point or question arising in another or principal action; and so called from its being *determined before, (prius,* or *prce judicari.)*

ACTIO PRIESCRIPTIS VERBIS. A form of action which derived its force from continued usage or the *responsa prudentium,* and was founded on the unwritten law. 1 Spence, Eq.Jur. 212. The distinction between this action and an *actio in factum* is said to be, that the latter was founded not on usage or the unwritten law, but by analogy to or on the equity of some subsisting law; 1 Spence, Eq.Jur. 212.

ACTIO PRIETORIA. A prætorian action; one introduced by the prætor, as distinguished from the more ancient *actio civilis, (q.* v.) Inst. 4, 6, 3; Mackeld.Rom.Law, § 207.

ACTIO PRO SOCIO. An action of partnership. An action brought by one partner against his associates to compel them to carry out the terms of the partnership agreement. Story, Partn., Bennett ed. § 352; Pothier, Contr. de Societe, n. 34.

ACTIO PUBLICIANA. An action which lay for one who had lost a thing of which he had bona *fide* obtained possession, before he had gained a property in it, in order to have it restored, under color that he had obtained a property in it by prescription. Inst. 4, 6, 4; Heinecc. Elem. lib. 4, tit. 6, § 1131; Halifax, Anal. b. 3, c. 1, n. 9. It was an honorary action, and derived its name from the prætor Publicius, by whose edict it was first given. Inst. 4, 6, 4.

ACTIO QUIELIBET IT SUA VIA. Every action proceeds in its own way. Jenk.Cent. 77.

ACTIO QUOD JUSSU. An action given against a master, founded on some business done by his slave, acting under his *order, ( jussu.)* Inst. 4, 7, 1; Dig. 15, 4; Cod. 4, 26.

ACTIO QUOD METUS CAUSA. An action granted to one who had been compelled by unlawful force, or fear *(metus causa)* that was not groundless, *(metus probabilis* or *Justus,)* to deliver, sell, or promise a thing to another. Bract. fol. 103b; Mackeld.Rom.Law, § 226.

ACTIO REALIS. A real action. The proper term in the civil law was *rei vindicatio.* Inst. 4, 6, 3.

ACTIO REDHIBITORIA. An action to cancel a sale in consequence of defects in the thing sold.

It was prosecuted to compel complete restitution to the seller of the thing sold, with its produce and accessories, and to give the buyer .back the price, with interest, as an equivalent for the restitution of the produce. Hunter, Rom.Law, 332. See Redhibitory Action.

ACTIO RERUM AMOTARUM. An action for things removed; an action which, in cases of divorce, lay for a husband against a wife, to recover things carried away by the latter, in contemplation of such divorce. Dig. 25, 2; Id. 25, 2; 25, 30. It also lay for the wife against the husband in such cases. Dig. 25, 2, 7, 11; Cod. 5, 21.

ACTIO RESCISSORIA. An action for restoring plaintiff to a right or title which he has lost by prescription, in a case where the equities are such that he should be relieved from the operation of the prescription. Mackeld.Rom.Law, § 226.

An action to rescind a prescriptive title by one who was entitled to exemption from the prescription law, as a minor, etc.

ACTIO SERVIANA. An action which lay for the lessor of a farm, or rural estate, to recover the goods of the lessee or farmer, which were pledged or bound for the rent. Inst. 4, 6, 7.

ACTIO STRICTI JURIS. An action of strict right. The class of civil law personal actions, which were adjudged only by the strict law, and in which the judge was limited to the precise language of the formula, and had no discretionary power to regard the bona *fides* of the transaction. See Inst. 4, 6, 28; Gaius, iii. 137; Mackeld. Rom.Law, § 210; 1 Spence, Eq.Jur. 218.

ACTIO TEMPORALIS. An action which must be brought within a limited time. See Limitation.

ACTIO TUTELIE. Action founded on the duties or obligations arising on the relation analogous to that of guardian and ward.

ACTIO UTILIS. A beneficial action or equitable action. An action founded on equity instead of strict law, and available for those who had equitable rights or the beneficial ownership of property.

Actions are divided into *actiones directce* or *utiles.* The former are founded on certain legal obligations which from their origin were accurately defined and recognized as actionable. The latter were formed analogically in imitation of the former. They were permitted in legal obligations for which the *actiones directce* were not originally intended, but which resembled the legal obligations which formed the basis of the direct action. Mackeld.Rom.Law, § 207.

ACTIO VENDITI. An action employed in behalf of a seller, to compel a buyer to pay the price, or perform any special obligations embodied in a contract of sale. Hunter, Rom.Law, 332.

ACTIO VI BONORUM RAPTORUM. An action for goods taken by force; a species of mixed action, which lay for a party whose goods or movables *(bona)* had been taken from him by force,

(vi,) to recover the things so taken, together with a penalty of triple the value. Inst. 4, 2; Inst. 4, 6, 19. Bracton describes it as lying *de rebus mobilibus vi ablatis sive robbatis,* (for movable things taken away by force, or robbed.) Brae. fol. 103b.

ACTIO VULGARIS. A legal action; a common action. Sometimes used for *actio directa.* Mackeld.Rom.Law, § 207.

ACTION. Conduct; behavior; something done; the condition of acting; an act or series of acts.

French Commercial Law

Stock in a company, or shares in a corporation.

Practice

The legal and formal demand of one's right from another person or party made and insisted on in a court of justice. Smith-Webster Co. v. John, C.C.A.Pa., 259 F. 549, 551; Dinsmore v. Barker, 61 Utah, 332, 212 P. 1109; Shaw v. Lone Star Building & Loan Ass'n, Tex.Civ.App., 40 S.W. 2d 968, 969. Pursuit of right in court, without regard to form of procedure. Ginzberg v. Wyman, 272 Mass. 499, 172 N.E. 614, 615. Form of suit given by law for recovery of that which is one's due. Co.Litt. 284b, 285a; Peterson v. A. Guthrie & Co., D.C.Wash., 3 F.Supp. 136, 138. Judicial means of enforcing a right. Code Ga. 1882, § 3151 (Civ.Code 1926, § 5507). Judicial remedy for the enforcement or protection of a right. White v. White, 98 Ind.App. 587, 186 N.E. 349, 351.

An ordinary proceeding in a court of justice by which one party prosecutes another for the enforcement or protection of a right, the redress or prevention of a wrong, or the punishment of a public offense. Code Civ.Proc.S.D.1903, § 12 (Comp.Laws 1929, § 2091) ; Missionary Soc. v. Ely, 47 N.E. 537, 56 Ohio St. 405.

Cross-action, White v. St. Louis Post Offices Corporation, 348 Mo. 961, 156 S.W.2d 695, 698, and counterclaim, Webster v. Freeman, 27 Cal.App.2d 5, 80 P.2d 497, 499, are actions but not set off, Kress v. Central Trust Co. of Rochester, 283 N.Y.S. 467, 471, 246 App. Div. 76.

It includes all the formal proceedings in a court of justice attendant upon the demand of a right made by one person of another in such court, including an adjudication upon the right and its enforcement or denial by the court.

Proceedings held actions : Disbarment, In re Wilcox, 90 Kan. 646, 135 P. 995; probating will, Simpson v. Simpson, 273 Ill. 90, 112 N.E. 276, 277; will contest, Byrne v. Byrne, Mo.Sup., 181 S.W. 391, 392; workmen's compensation, Pigeon v. Employers' Liability Assur. Corporation, 216 Mass. 51, 102 N.E. 932, 935, Ann.Cas.1915A, 737; criminal prosecution, Mason v. U. S., C.C.A.I11., 1 F.2d 279, 280; mandamus, People v. Lueders, 287 Ill. 107, 122 N.E. 374, 375; naturalization, In re Fordiani, 98 Conn. 435, 120 A. 338, 341.

Proceedings held not actions : attachment, State v. Superior Court of Spokane County, 110 Wash. 49, 187 P. 708; arbitration, Temple v. Riverland Co., Tex.Civ.App., 228 S. W. 605, 609; criminal prosecution, U. S. v. Cleveland, D.C. Ala., 281 F. 249, 253; Wynn v. Commonwealth, 198 Ky. 644, 249 S.W. 783, 784; writ of citation, McClelland v. State, 101 Ohio St. 42, 127 N.E. 409, 410; certiorari, Campbell, v. Common Council of City of Watertown, 46 S.D. 574, 195 N.W. 442; mandamus, De Leyer v. Britt, 212 N.Y. 565, 106 N.E. 57; child's support, Head v. Fuller, 122 Me. 15, 118 A. 714, 715; drainage, Richardson County v. Drainage Dist. No. 2 of Richardson County, 96 Neb. 169, 147 N.W. 205, 206; condemnation, State v. Superior Court for Ferry County, 145 Wash. 576, 261 P. 110, 111.

Scotch Law

A suit or judicial proceeding.

Suit Distinguished

Strictly applied, action does not usually refer to chancery practice. City of Beckley v. Craighead, 125 W.Va. 484, 24 S.E.2d 908, 911. But terms "action" and "suit" are now nearly, if not entirely, synonymous. (3 Bl.Comm. 3, 116, et passim.) Elmo v. James, Tex.Civ.App., 282 S.W. 835, 839; Coleman v. Los Angeles County, 180 Cal. 714, 182 P. 440. Or, if there be a distinction, it is that the term "action" is generally confined to proceedings in a court of law, while "suit" is equally applied to prosecutions at law or in equity. McBride v. University Club, 112 Ohio St. 69, 146 N.E. 804, 805; Guarantee Trust & Banking Co. v. Dickson, 148 Ga. 311, 96 S.E. 561, 562; Niantic Mills Co. v. Riverside & O. Mills, 19 R.I. 34, 31 A. 432; Ulshafer v. Stewart, 71 Pa. 170. Formerly, however, an *action* was considered as terminating with the giving of judgment, the execution forming no part of it. (Litt. § 504; Co.Litt. 289a.) A *suit* included the execution. (Litt. § 291a.) So, an action is termed by Lord Coke, "the *right* of a *suit."* (2 Inst. 40.) Burrill.

Types of Actions

Actions are called, in common-law practice, *ex contractu* when they are founded on a contract; *ex delicto* when they arise out of a tort. Nelson v. Great Northern R. Co., 28 Mont. 297, 72 Pac. 642; Van Oss v. Synon, 85 Wis. 661, 56 N.W. 190.

If a cause of action arises from a breach of promise, the action is "ex contractu," and, if it arises from breach of duty growing out of contract, it is "ex delicto." Tort or trespass is none the less such because it incidentally involves breach of contract. Berning v. Colodny & Colodny, 103 Cal.App. 188, 284 P. 496, 498.

As to class or representative actions. See Class Or Representative Action.

As to the distinction between a *revocatory action* and an *action in simulation,* see Chapman v. Irwin, 157 La. 920, 103 So. 263, 265.

*Civil* actions are such as lie in behalf of persons to enforce their rights or obtain redress of wrongs in their relation to individuals.

*Common law* actions are such as will lie, on the particular facts, at common law, without the aid of a statute.

*Criminal* actions are such as are instituted by the sovereign power, for the purpose of punishing or preventing offenses against the public.

*Local* action. See Local Action.

*Mixed* actions partake of twofold nature of real and personal actions, having for their object the demand and restitution of real property and also personal damages for a wrong sustained. 3 Bl.Comm. 118; Hall v. Decker, 48 Me. 257. Mixed actions are those which are brought for the specific recovery of lands, like real actions, but comprise, joined with this claim, one for damages in respect of such property; such as the action of waste, where, in addition to the recovery of the place wasted, the demandant claims damages; the writ of entry, in which, by statute, a demand of mesne profits may be joined; and

dower, in which a claim for detention may be included. 48 Me. 255. In the civil law, an action in which some specific thing was demanded, and also some personal obligation claimed to be performed; or, in other words, an action which proceeded both *in rem* and *in personam.* Inst. 4, 6, 20.

*Penal* actions are such as are brougnt, either by the state or by an individual under permission of a statute, to enforce a penalty imposed by law for the commission of a prohibited act.

*Personal* action. In civil law, an action *in personam. It* seeks to enforce an obligation imposed on the defendant by his contract or delict; that is, it is the contention that he is bound to transfer some dominion or to perform some service or to repair some loss. Gaius, bk. 4, § 2. In common law. An action brought for the recovery of some debt or for damages for some personal injury, in contradistinction to the old real actions, which related to real property only. See 3 Bl.Comm. 117. Boyd v. Cronan, 71 Me. 286; Doe v. Waterloo Min. Co., C.C.Cal., 43 F. 219; Osborn v. Fall River, 140 Mass. 508, 5 N.E. 483. An action which can be brought only by the person himself who is injured, and not by his representatives.

*Popular* actions, in English usage, are those actions which are given upon the breach of a penal statute, and which any man that will may sue on account of the king and himself, as the statute allows and the case requires. Because the action is not given to one especially, but generally to any that will prosecute, it is called "action popular ;" and, from the words used in the process, *(qui tam pro domino rege sequitur quam pro se ipso,* who sues as well for the king as for himself,) it is called a *qui tam* action. Tomlins.

*Real* actions. At common law, one brought for the specific recovery of lands, tenements, or hereditaments. Steph.Pl. 3; Crocker v. Black, 16 Mass. 448; Hall v. Decker, 48 Me. 256; Doe v. Waterloo Min. Co., C.C.Cal., 43 F. 220; Mathews v. Sniggs, 75 Okl. 108, 182 P. 703, 708. They are *droitural* when they are based upon the right of property, and *possessory* when based upon the right of possession. They are either writs of right ; writs of entry upon disseisin (which lie in the per, the per et cui, or the post), intrusion, or alienation; writs ancestral possessory, as mort d'ancestor, aiel, besaiel, cossinage, or nuper obiit. Com.Dig. *Actions* (D 2). The former class was divided into *droitural,* founded upon demandant's own seisin, and *ancestral droitural* upon the demandant's claim in respect of a mere right descended to him from an ancestor. Possessory actions were divided in the same way—as to the demandant's own seisin and as to that of his ancestor. Among the civilians, real actions, otherwise called "vindications," were those in which a man demanded something that was his own. They were founded on doiminion, or *jus in re.* The real actions of the Roman law were not, like the real actions of the common law, confined to real estate, but they included personal, as well as real, property. Wharton.

*Statutory* actions are such as can only be based upon the particular statutes creating them.

*Transitory* actions are those founded upon a cause of action not necessarily referring to or arising in any particular locality. Their characteristic feature is that the right of action follows the person of the defentlant. Brown v. Brown, 155 Tenn. ;,30, 296 S.W. 356, 358. Actions are "transitory" when the transactions relied on might have taken place anywhere, and are "local" when they could not occur except in some particular place ; the distinction being in the nature of the subject of the injury, and not in the means used or the place at which the cause of action arises. Brady v. Brady, 161 N.C. 324, 77 S.E. 235, 236, 44 L.R.A.,N.S., 279; Taylor v. Sommers Bros. Match Co., 35 Idaho, 30, 204 P. 472, 474, 42 A.L.R. 189. The test of whether an action is local or transitory is whether the injury is done to a subject-matter which, in its nature, could not arise beyond the locality of its situation, in contradistinction to the subject causing the injury. Mattix v. Swepston; 127 Tenn. 693, 155 S.W. 928, 929. Actions triable where defendant resides are termed "transitory" and those triable where the subject-matter is situated are termed "local." State v. District Court of Swift County, 164 Minn. 433, 205 N.W. 284, 285.

See Cause of Action.

ACTION EX CONTRACTU. An action for breach of promise set forth in a contract, express or implied. Bristol v. Sun Vacuum Stores, 181 Misc. 522, 42 N.Y.S.2d 501, 504; McCullough v. The American Workmen, 200 S.C. 84, 20 S.E.2d 640, 644.

ACTION EX DELICTO. An action arising from a breach of duty growing out of contract. Berning v. Colodny & Colodny, 103 Cal.App. 188, 284 P. 496, 498; Federal Life Ins. Co. v. Maxam, 70 Ind.App. 266, 117 N.E. 801, 806.

ACTION FOR ACCOUNTING. Action in equity based on inadequacy of legal remedy and particularly applicable to mutual and complicated accounts and where confidential or fiduciary relationship exists. Dahlberg v. Fisse, 328 Mo. 213, 40 S.W.2d 606, 609. To adjust mutual accounts and to strike a balance. Cline v. McKee, 186 Okl. 366, 98 P.2d 25, 27.

ACTION FOR MONEY HAD AND RECEIVED. One in assumpsit based upon promise to repay implied by law, and in respect of limitation is a stated or liquidated account. Mutual Building & Loan Ass'n v. Watson, 226 Ala. 526, 147 So. 817, 818.

Where one person has received money or its equivalent under such circumstances that in equity and good conscience he ought not to retain it and in justice it belongs to another. Interstate Life & Accident Co. v. Cook, 19 Tenn.App. 290, 86 S.W.2d 887, 891.

ACTION FOR POINDING. An action by a creditor to obtain a sequestration of the rents of land and the goods of his debtor for the satisfaction of the debt, or to enforce a distress.

ACTION IN PERSONAM, IN REM. See In Personam, In Rem.

ACTION OF ABSTRACTED MULTURES. An action for multures or tolls against those who are thirled to a mill, *i. e.,* bound to grind their corn at a certain mill, and fail to do so. Bell.

ACTION OF ADHERENCE. See Adherence.

ACTION OF A WRIT. A phrase used when a defendant pleads some matter by which he shows that the plaintiff had no cause to have the writ sued upon, although it may be that he is entitled to another writ or action for the same matter. Cowell.

ACTION OF ASSIZE. A real action which proves the title of the demandant, merely by showing his ancestor's possession. Sherman v. Dilley, 3 Nev. 21, 26, citing 5 Chit.B1. 184.

ACTION OF ASSUMPSIT. See Assumpsit.

ACTION OF BOOK DEBT. A form of action for the recovery of claims, such as are usually evidenced by a book-account; this action is principally used in Vermont and Connecticut. Newton v. Higgins, 2 Vt. 366.

ACTION ON CONTRACT. An action brought to enforce rights whereof the contract is the evi-

Bence, and usually the sufficient evidence. Kokusai Kisen Kabushiki Kaisha v. Argos Mercantile Corporation, C.C.A.N.Y., 280 F. 700, 701.

ACTION ON THE CASE. A species of personal action of very extensive application, otherwise called "trespass on the case," or simply "case," from the circumstance of the plaintiff's whole *case or cause of complaint* being set forth at length in the original writ by which formerly it was always commenced. 3 Bl.Comm. 122. Wallace v. Wilmington & N. R. Co., 8 Houst. (Del.) 529, 18 A. 818.

In its most comprehensive signification it includes *assumpsit* as well as an action in form *ex delicto;* at present when it is mentioned it is usually understood to mean an action in form *ex delicto.* It is founded on the common law or upon acts of Parliament, and lies generally to recover damages for torts not committed with force, actual or implied; or having been occasioned by force where the matter affected was not tangible, or the injury was not immediate but consequential; or where the interest in the property was only in reversion, in all of which cases trespass is not sustainable; 1 Chit.P1. 132. In the progress of judicial contestation it was discovered that there was a mass of tortious wrongs unattended by direct and immediate force, or where the force, though direct, was not expended on an existing right of present enjoyment, for which the then known forms of action furnished no redress. The action on the case was instituted to meet this want. And wrongs which will maintain an action on the case are frequently committed in the nonobservance of duties, which are but the implication of contract obligation, duties of requisite skill, fidelity, diligence, and a proper regard for the rights of others, implied in every obligation to serve another. If the cause of action arises from a breach of promise, the action is "ex contractu" ; but if the cause of action arises from a breach of duty growing out of the contract, it is in form ex delicto and case. When there is a contract, either express or implied, from which a common-law duty results, an action on the case lies for the breach of that duty. Bently-Beale, Inc. v. Wesson Oil & Snowdrift Sales Co., 231 Ala. 562, 165 So. 830, 832. See Assumpsit.

ACTION QUASI IN REM. An action brought against persons which only seeks to subject certain property of those persons to discharge of claims asserted and judgment therein is only conclusive between parties and their privies. Tobin v. McClellan, 225 Ind. 335, 75 N.E.2d 149, 151.

ACTION REDHIBITORY, See Redhibitory Action.

ACTION TO QUIET TITLE. One in which plaintiff asserts his own estate and declares generally that defendant claims some estate in the land, without defining it, and avers that the claim is without foundation, and calls on defendant to set forth the nature of his claim, so that it may be determined by decree.

It differs from a "suit to remove a cloud," in that plaintiff therein declares on his own title, and also avers the source and nature of defendant's claim, points out its defect, and prays that it may be declared void as a cloud on plaintiff's estate. Manning v. Gregoire, 97 Or. 394, 192 P. 406, 407. The apparent difference between an action to restore a lost instrument and one to quiet title is that, in the former, ordinarily both the titles of plaintiff and defendant are deraigned in the complaint, which must disclose that, notwithstanding an apparent interest of defendant the property belongs to plaintiff ; and in the latter action the complaint need only allege the ultimate fact of plaintiff's interest and defendant's outstanding claim. Nicholson v. Nicholson, 67 Mont. 517, 216 P. 328, 329, 31 A.L.R. 548. See, also, Slette v. Review Pub. Co., 71 Mont. 518, 230 P. 580, 581. It embraces every sort of a claim whereby the plaintiff might be deprived of his property or his title clouded or its value depreciated, or whereby the plaintiff might be incommoded or damnified by assertion of an outstanding title already held or to grow out of the adverse pretension. Bank of American Nat. Trust & Savings Ass'n v. Town of Atherton, 60 Cal.App.2d 268, 140 P.2d 678, 680.

ACTIONABLE. That for which an action will lie, furnishing legal ground for an action.

ACTIONABLE FRAUD. Deception practiced in order to induce another to part with property or surrender some legal right; a false representation made with an intention to deceive; may be committed by stating what is known to be false or by professing knowledge of the truth of a statement which is false, but in either case, the essential ingredient is a falsehood uttered with intent to deceive. Sawyer v. Prickett, 19 Wall. 146, 22 L. Ed. 105.

To constitute "actionable fraud," it must appear that defendant made a material representation; that it was false ; that when he made it he knew it was false,- or made it recklessly without any knowledge of its truth and as a positive assertion ; that he made it with intention that it should be acted on by plaintiff ; that plaintiff acted in reliance on it; and that plaintiff thereby suffered injury. Blair v. McCool, 136 Or. 139, 295 P. 950, 952. Essential elements are representation, falsity, scienter, .deception, and injury. Cobb v. Cobb, 211 N.C. 146, 189 S.E. 479, 482.

ACTIONABLE MISREPRESENTATION. A false statement respecting a fact material to the contract and which is influential in procuring it. Wise v. Fuller, 29 N.J.Eq. 257.

ACTIONABLE NEGLIGENCE. The breach or nonperformance of a legal duty, through neglect or carelessness, resulting in damage or injury to another. Fidelity & Casualty Co. v. Cutts, 95 Me. 162, 49 Atl. 673.

It is failure of duty, omission of something which ought to have been done, or doing of something which ought not to have been done, or which reasonable man, guided by considerations which ordinarily regulate conduct of human affairs, would or would not do. Goff v. Emde, 32 Ohio App. 216, 167 N.E. 699, 700. Essential elements are failure to exercise due care, injury, or damage, and proximate cause. Rountree v. Fountain, 203 N.C. 381, 166 S.E. 329, 330.

ACTIONABLE NUISANCE. Anything wrongfully done or permitted which injures or annoys another in the enjoyment of his legal rights. Miller v. City of Dayton, 70 Ohio App. 173, 41 N.E.2d 728, 730.

Anything injurious to health, or indecent, or offensive to the senses, or an obstruction to the free use of property so as to interfere with the comfortable enjoyment of life or property. Cooper v. Overton, 102 Tenn. 211, 52 S.W. 183, 45 L.R.A. 591.

ACTIONABLE TORT. To constitute an "actionable tort," there must be a legal duty, imposed by statute or otherwise, owing by defendant to the one injured, and in the absence of such duty damage caused is "injury without wrong" or "damnum absque injuria." Coleman v. California Yearly Meeting of Friends Church, 27 Cal.App.2d 579, 81 P.2d 469, 470.

ACTIONABLE WORDS. In law of libel and slander, such words as naturally imply damage. Dahm v. O'Connell, 161 N.Y.S. 909, 911, 96 Misc. 582.

Per Quod

Words actionable only on allegation and proof of special damage. Knapp v. Post Printing & Publishing Co., 111 Colo. 492, 144 P.2d 981, 984.

Words not actionable per se upon their face, but only in consequence of extrinsic facts showing circumstances under which they were said or the damages resulting to slandered party therefrom. Smith v. Mustain, 210 Ky. 445, 276 S.W. 154, 155, 44 A.L.R. 386. Not injurious on their face in their usual and natural signification, but only so in consequence of extrinsic facts and requiring innuendo. Piplack v. Mueller, 97 Fla. 440, 121 So. 459.

Per Se

Words in themselves libelous. Knapp v. Post Printing & Publishing Co., 111 Colo. 492, 144 P.2d 981, 984.

Words which law presumes must actually, proximately, and necessarily damage defendant for which general damages are recoverable and whose injurious character is a fact of common notoriety, established by the general consent of men, necessarily importing damage. Ellsworth v. Martindale-Hubbell Law Directory, 66 N.D. 578, 268 N.W. 400, 407. Words themselves opprobrious ; susceptible only of opprobrious meaning. Fite v. Oklahoma Pub. Co., 146 Okl. 150, 293 P. 1073, 1075. Importing a charge of some punishable crime or some offensive disease, imputing moral turpitude, or tending to injure a party in his trade or business. Barnes v. Trundy, 31 Me. 321; Lemons v. Wells, 78 Ky. 117; Mayrant v. Richardson, 1 Nott & McC. 347, 9 Am.Dec. 707. Tending to injure one's reputation, thereby exposing him to public hatred, contempt or ridicule, tending to degrade or lower him. Hodges v. Cunningham, 160 Miss. 576, 135 So. 215, 217. Such words are actionable without allegation of special damages. Kluender v. Semann, 203 Iowa 68, 212 N.W. 326, 327. See also Libelous per se.

ACTIONABLE WRONG. Committed when a responsible person has neglected to use a reasonable degree of care for protection of another person from such injury as under existing circumstances should reasonably have been foreseen as a proximate consequence of that negligence. Chadwick v. Bush, 174 Miss. 75, 163 So. 823, 824.

ACTIONARE. L. Lat. (From *actio,* an action.) In old records. To bring an action; to prosecute, or sue. Thorn's Chron.; Whishaw.

ACTIONARY. A foreign commercial term for the proprietor of an *action* or share of a public company's stock; a stockholder.

ACTIONES LEGIS. In the Roman law, legal or lawful action; actions of or at law,) *legitimoe actiones.)* Dig. 1, 2, 2, 6.

ACTIONES NOMINATIE. (Lat. named actions). In the English chancery, writs for which there were precedents. The statute of Westminster, 2, c. 24, gave chancery authority to form new writs *in consimili case;* hence the action on the case.

ACTIONS. (Fr.) Shares of corporate stock. Compare Actionary.

ACTIONS ORDINARY. In Scotch law, all actions which are not rescissory. Ersk.Inst. 4, 1, 18.

ACTIONS RESCISSORY. In Scotch law, these are either (1) actions of proper improbation for declaring a writing false or forged; (2) actions of reduction-improbation for the production of a writing in order to *have it set* aside or its effect ascertained under the certification that the writing if not produced shall be declared false or forged; and (3) actions of simple reduction, for declaring a writing called for null until produced. Ersk.Princ. 4, 1, 5.

ACTIONUM GENERA MAXIME SUNT SERVANDA. The kinds of actions are especially to be preserved. Lofft 460.

ACTIVE. That is in action; that demands action; actually subsisting; the opposite of passive. An active debt is one which draws interest. An active trust is a confidence connected with a duty. An active use is a present legal estate.

ACTIVE CONCEALMENT. This implies a purpose or design accomplished by words or acts, while passive concealment consists in mere silence where there is a duty to speak. Vendt v. Duenke, Mo.App., 210 S.W.2d 692, 699.

Concealment becomes a fraud where it is effected by misleading and' deceptive talk, acts, or conduct, where it is accompanied by misrepresentations, or where, in addition to a party's silence, there is any statement, word, or act on his part which tends affirmatively to a suppression of the truth. Such conduct is designated active concealment. Equitable Life Ins. Co. of Iowa v. Halsey, Stuart & Co., C.C.A.I11., 112 F.2d 302, 309.

ACTIVE NEGLIGENCE. A term of extensive meaning obviously embracing many occurrences that would fall short of willful wrongdoing, or of crass negligence, for example, all inadvertent acts causing injury to others, resulting from failure to exercise ordinary care, likewise all acts the effects of which are misjudged or unforeseen, through want of proper attention, or reflection, and hence the term covers the acts of willful wrongdoing and also those which are not of that character. Cohen v. Noel, Tenn.App., 104 S.W.2d 1001, 1005.

ACTIVE SERVICE. "Active service" in army does not necessarily mean actual service, but means service performed at direction of superior officer or officers while receiving emoluments to which soldier is entitled. United States v. Woodworth, D.C.Mass., 36 F.Supp. 645, 646.

ACTIVE TRUST. See Trust.

ACTIVITY. A recreational "activity" is a physical or gymnastic exercise, an agile performance, such as dancing. McClure v. Board of Education of City of Visalia, 38 Cal.App. 500, 176 P. 711, 712.

ACTON BURNEL, STATUTE OF. In English law, a statute, otherwise called *Statutum Mercatorum* or *de Mercatoribus* the statute of the merchants, made at a parliament held at the castle or village of Acton Burnel in Shropshire, in the 11th year of the reign of Edward I. 2 Reeves, Eng. Law, 158-162. It was a statute for the collection of debts, the earliest of its class, being enacted in 1283. A further statute for the same object, and known as De Mercatoribus, was enacted 13 Edw. I. (c. 3.). See Statute Merchant.

ACTOR.

Old European Law

A patron, proctor, advocate, or pleader; one who acted for another in legal matters; one who represented a party and managed his cause. An attorney, bailiff, or steward; one who managed or acted for another. The Scotch "doer" is the literal translation.

Roman Law

One who acted for another; one who attended to another's business; a manager or agent. A slave who attended to, transacted, or superintended his master's business or affairs, received and paid out moneys, and kept accounts. Burrill.

The word has a variety of closely-related meanings, very nearly corresponding with manager. Thus, *actor domince,* manager of his master's farm; *actor ecclesice,* manager of church property; *actores provinciarum,* tax-gatherers, treasurers, and managers of the public debt.

*Actor ecclesice.—An* advocate for a church; one who protects the temporal interests of a church. *Actor villce* was the steward or head-bailiff of a town or village. Cowell.

*Plaintiff or complainant.* In a civil or private action the plaintiff was often called by the Romans *"petitor;"* in a public action *(causa publica)* he was called *"accusator."* The defendant was called *"revs,"* both in private and public causes; this term, however, according to Cicero, *(De Orat.* 43,) might signify either party, as indeed we might conclude from the word itself. In a private action, the defendant was often called *"adversarius,"* but either party might be called so.

Also, the term is used of a party who, for the time baing, sustains the burden of proof, or has the initiative in the suit.

Actor qui contra regulam quid adduxit, non est audiendus. A plaintiff (or pleader) is not to be heard who has advanced anything against authority, (or against the rule.)

Actor sequitur forum rei. According as *rei* is intended as the genitive of *res,* a thing, or *reus,* a defendant, this phrase means: The plaintiff follows the forum of the property in suit, or the forum of the defendant's residence. Branch, Max. 4. Home, Law Tr. 232; Story, Confl.L. § 325 k; 2 Kent 462.

ACTORE NON PROBANTE REUS ABSOLVITUR. When the plaintiff does not prove his case the defendant is acquitted (or absolved). Hob. 103.

ACTORI INCUMBIT ONUS PROBANDI. The burden of proof rests on the plaintiff, (or on the party who advances a proposition affirmatively.) Hob. 103.

ACTORNAY. In old Scotch law, an attorney. Skene.

ACTRIX. Lat. A female actor; a female plaintiff. Calvinus, Lex.

ACTS OF COURT. Legal memoranda made in the admiralty courts in England, in the nature of pleas.

ACTS OF POSSESSION. To constitute adverse possession, acts of possession must be such as, if seen by the party whose claim is sought to be divested, would apprise him that the party doing the acts claimed the ownership of the property. Crosby v. City of Greenville, 183 Mich. 452, 150 N.W. 246, 248.

ACTS OF SEDERUNT. In Scotch law, ordinances for regulating the forms of proceeding, before the court of session, in the administration of justice, made by the judges, who have the power by virtue of a Scotch act of parliament passed in 1540. Ersk. Prin. § 14.

ACTUAL. Real; substantial; existing presently in act, having a valid objective existence as opposed to that which is merely theoretical or possible. Ciaccio v. Hartman, 170 La. 949, 129 So. 540. Opposed to potential, possible, virtual, conceivable, theoretical, hypothetical, or nominal. American Ins. Co. of Newark, N. J., v. Seminole County Board of Education, 51 Ga.App. 808, 181 S.E. 783, 786. Something real, in opposition to constructive or speculative; something existing in act. Astor v. Merritt, 4 S.Ct. 413, 111 U.S. 202, 28 L. Ed. 401. Existing in act, fact, or reality. Guarisco v. Massachusetts Bonding & Insurance Co., 4 N.Y.S.2d 788, 792, 167 Misc. 875.

It is used as a legal term in contradistinction to virtual or constructive as of possession or occupation; Cleveland v. Crawford, 7 Hun (N.Y.) 616; or an actual settler, which implies actual residence; ' McIntyre v. Sherwood, 82 Cal. 139, 22 Pac. 937. An actual seizure means nothing more than seizure, since there was no fiction of constructive seizure before the act; L.R. 6 Exch. 203.

*Actually* is opposed to seemingly, pretendedly, or feignedly, as *actually engaged in farming* means really, truly, in fact; In re Strawbridge & Mays, 39 Ala. 367; Ayer & Lord Tie Co. v. Commonwealth, 208 Ky. 606, 271 S.W. 693, 694.

As to actual "Bias," "Damages," "Delivery," "Fraud," "Mal ice, " "Notice," "Occupation," "Ouster," "Possession," "Residence," "Seisin," "Total Loss," see those titles.

ACTUAL AUTHORITY. In the law of agency, such authority as a principal intentionally confers on the agent, or intentionally or by want of ordinary care allows the agent to believe himself to possess. National Cash Register Co. v. Wichita Frozen Food Lockers, Tex.Civ.App., 172 S.W.2d 781, 787. Includes both express and implied authority. Grismore v. Consolidated Products Co., 232 Iowa 328, 5 N.W.2d 646, 651.

ACTUAL BIAS. See Bias.

ACTUAL CASH VALUE. The fair or reasonable cash price for which the property could be sold in the market, in the ordinary course of business, and not at forced sale; the price it will bring in a fair market after reasonable efforts to find a purchaser who will give the highest price. Peavy-Wilson Lumber Co. v. Jackson, 161 La. 669, 109 So. 351, 352. What property is worth in money, allowing for depreciation. Glens Falls Ins. Co. of New York v. Garner, 229 Ala. 39, 155 So. 533, 536. Ordinarily, "actual cash value," "fair market price," and "market value" are synonymous terms. Butler v. JEtna Ins. Co. of Hartford, Conn., 64 N.D. 764, 256 N.W. 214, 218.

ACTUAL CHANGE OF POSSESSION. In statutes of frauds, an open, visible, and unequivocal change of possession, manifested by the usual outward signs, as distinguished from a merely formal or constructive change. Stevens v. Irwin, 15 Cal. 503, 76 Am.Dec. 500.

ACTUAL COST. The actual price paid for goods by a party, in the case of a real *bona fide* purchase, and not the market value of the goods. Ogunquit Village Corporation v. Inhabitants of Wells, 123 Me. 207, 122 A. 522, 524.

"Actual cost" has no common-law significance, and it is without any well-understood trade or technical meaning. It is a general or descriptive term which may have varying meanings according to the circumstances in which it is used. It imports the exact sum expended or loss sustained rather than the average or proportional part of the cost. Its meaning may be restricted to overhead or extended to other items. State v. Northwest Poultry & Egg Co., 203 Minn. 438, 281 N.W. 753, 755.

ACTUAL DELIVERY. See Delivery.

ACTUAL EVICTION. An actual expulsion of the tenant out of all or some part of the demised premises; a physical ouster or dispossession from the very thing granted or some substantial part thereof. Cauley v. Northern Trust Co., 315 Ill. App. 307, 43 N.E.2d 147, 155, 315.

An arbitrary and willful interference with tenant's rights by landlord is essential. Kusche v. Sabin, City Ct., New Rochelle, 6 N.Y.S.2d 771, 773. Deprivation of beneficial enjoyment of property in whole or in part or exclusion from some portion of demised premises. Kusche v. Sabin, City Ct., New Rochelle, 6 N.Y.S.2d 771, 773. Dispossession by process of law, Stanton v. Conley, 278 N.Y.S. 275, 277, 244 App.Div. 84. Expulsion or exclusion from demised premises. Liberal Savings & Loan Co. v. Frankel Realty Co., 137 Ohio St. 489, 30 N.E.2d 1012, 1017, physical expulsion by landlord. General American Life Ins. Co. v. North American Mfg. Co., 320 Ill.App. 488, 51 N.E.2d 619, wrongful entry on premises by lessor is necessary. Title & Trust Co. v. Durkheimer Inv. Co., 155 Or. 427, 63 P.2d 909.

ACTUAL FRAUD. See Fraud.

ACTUAL LOSS. One resulting from the real and substantial destruction of the property insured.

ACTUAL MARKET VALUE. In custom laws, the price at which merchandise is freely offered for sale to all purchasers; the price which the manufacturer or owner would have received for merchandise, sold in the ordinary course of trade in the usual wholesale quantities. United States v. Sischo, D.C.Wash., 262 F. 1001, 1011.

ACTUAL NOTICE. See Notice.

ACTUAL POSSESSION. See Possession.

ACTUAL PRACTICE. Active, open and notorious engagement in business, vocation or profession as opposed to casual, occasional or clandestine practice. State ex rel. Laughlin v. Washington State Bar Ass'n, 26 Wash.2d 914, 176 P.2d 301, 309.

ACTUAL RESIDENCE. The abode, where one actually lives, not mere naked legal residence. In Re McGrath, 243 App.Div. 803, 278 N.Y.S. 135.

ACTUAL SALE. Lands are "actually sold" at a tax sale, so as to entitle the treasurer to the statutory fees, when the sale is completed; when he has collected from the purchaser the amount of the bid. Miles v. Miller, 5 Neb. 272.

ACTUAL VALUE. "Actual value" to be awarded in condemnation proceeding is price that would probably result from negotiations between willing seller and willing buyer. State v. Hoblitt, 87 Mont. 403, 288 P. 181, 185. "Actual value,". "market value," "fair value," and the like may be used as convertible terms. Kerr v. Clinchfield Coal Corporation, 169 Va. 149, 192 S.E. 741, 744. "Saleable value," "actual value," "cash value," and others used in directions to tax assessing officers, all mean the same thing. In re Lang Body Co., C.C.A.Ohio, 92 F.2d 338, 340.

ACTUAL VIOLENCE. An assault with actual violence is an assault with physical force put in action, exerted upon the person assailed. The term violence is synonymous with physical force, and the two are used interchangeably in relation to assaults. Tanner v. State, 24 Ga.App. 132, 100 S.E. 44.

ACTUARIUS. In Roman law, a notary or clerk. One who drew the acts or statutes, or who wrote in brief the public acts.

An officer who had charge of the public baths; an officer who received the money for the soldiers, and distributed it among them; a notary.

An *actor,* which see. Du Cange.

ACTUARY. In English ecclesiastical law, a clerk that registers the acts and constitutions of the lower house of convocation; or a registrar in a court christian.

Also an officer appointed to keep savings banks accounts; the computing officer of an insurance company; a person skilled in calculating the value of life interests, annuities, and insurances. Champagne v. Unity Industrial Life Ins. Co., La. App., 161 So. 52, 53.

ACTUM. Lat. A deed; something done.

ACTUS. In the civil law, an act or action. *Non tantum verbis, sed etiam actu;* not only by words, but also by act. Dig. 46, 8. 5.

A species of right of way, consisting in the right of driving cattle, or a carriage, over the land subject to the servitude. Inst.. 2, 3, pr. It is sometimes translated a "road," and included the kind of way termed *"iter,"* or path. Lord Coke, who. adopts the term *"actus"* from Bracton, defines it a foot and horse way, vulgarly called "pack and prime way;" but distinguishes it from a cart-way. Co.Litt. 56a; Boyden v. Achenbach, 79 N.C. 539.

In old English law, an act of parliament; a statute. 8 Coke 40. A distinction, however, was sometimes made between *actus* and *statutum. Actus parliamenti* was an act made by the lords and commons; and it became *statutum,* when it received the king's consent. Barring.Obs.St. 46, note *b.*

Actus curiae neminem gravabit. An act of the court shall prejudice no man. Jenk.Cent. 118. Where a delay in an action is the act of the court, neither party shall suffer for it.

Actus Del nemini est damnosus. The act of God is hurtful to no one. 2 Inst. 287. That is, a person cannot be prejudiced or held responsible for an accident occurring without his fault and attributable to the "act of God." See Act of God.

Actus Del nemini facit injuriam. The act of God does injury to no one. 2 Bl.Comm. 122. A thing which is inevitable by the act of God, which no industry can avoid, nor policy prevent, will not be construed to the prejudice of any person in whom there was no laches. Broom, Max. 230.

Actus inceptus, cujus perfectio pendet ex voluntate partium, revocari potest; si autem pendet ex voluntate testiae personae, vel ex contingenti, revocari non potest. An act already begun, the completion of which depends on the will of the parties, may be revoked; but if it depend on the will of a third person, or on a contingency, it cannot be revoked. Bac.Max. reg. 20.

Actus judiciarius coram non judice irritus habetur, de ministeriali autem a quocunque provenit ratum esto. A judicial act by a judge without jurisdiction is void; but a ministerial act, from whomsoever proceeding, may be ratified. Lofft, 458.

Actus legis nemini est damnosus. The act of the law is hurtful to no one. An act in law shall prejudice no man. 2 Inst. 287.

Actus legis nemini facit injuriam. The act of the law does injury to no one. 5 Coke, 116.

Actus legitimi non recipiunt modum. Acts required to be done by law do not admit of qualification. Hob. 153; Branch, Princ.

Actus me invito factus non est meus actus. An act done by me, against my will, is not my act. Branch, Princ.

Actus non facit reum, nisi mens sit rea. An act does not make [the doer of it] guilty, unless the mind be guilty; that is, unless the intention be criminal. 3 Inst. 107. The intent and the act must both concur to constitute the crime. Lord Kenyon, C. J., 7 Term 514; Broom, Max. 306.

Actus repugnus non potest in esse produci. A repugnant act cannot be brought into being, *i. e.,* cannot be made effectual. Plowd. 355.

Actus servi in its quibus opera ejus communiter adhibita est, actus domini habetur. The act of a servant in those things in which he is usually employed, is considered the act of his master. Lofft, 227.

A. D. An abbreviation of Anno Domini meaning in the year of our Lord. Commonwealth v. Traylor, 20 Ky.Law Rep. 97, 98, 45 S.W. 356.

AD. Lat. At; by; for; near; on account of; to; until; upon; with relation to or concerning.

AD ABUNDANTIOREM CAUTELAM. L. Lat. For more abundant caution. 2 How. State Tr. 1182. Otherwise expressed, *ad cautelam ex superabundanti.* Id. 1163.

AD ADMITTENDUM CLERICUM. For the admitting of the clerk. A writ in the nature of an execution, commanding the bishop to admit his clerk, upon the success of the latter in a *quare impedit.*

AD ALIUD EXAMEN. To another tribunal; belonging to another court, cognizance, or jurisdiction.

AD ALIUM DIEM. At another day. A common phrase in the old reports. Yearb. P. 7 Hen. VI. 13.

AD ASSISAS CAPIENDAS. To take assises; to take or hold the assises. Bract. fol. 110a; 3 Bl. Comm. 185, 352. *Ad assisam capiendam;* to take an assise. Bract. fol. 110b.

AD AUDIENDAM CONSIDERATIONEM CURIIE. To hear the judgment of the court. Bract. 383 b.

AD AUDIENDUM ET DETERMINANDUM. To hear and determine. St. Westm. 2, cc. 29, 30. 4 Bla.Com. 278.

AD BARRAM. To the bar; at the bar. 3 How. State Tr. 112.

AD BARRAM EVOCATUS. Called to the bar. 1 Ld.Raym. 59.

AD CAMPI PARTEM. For a share of the field or land, for champert. Fleta, lib. 2, c. 36, § 4.

AD CAPTUM VULGI. Adapted to the common understanding.

AD COLLIGENDUM. For collecting; as an administrator or trustee *ad colligendum.* 2 Kent 414.

AD COLLIGENDUM BONA DEFUNCT'. For collecting the goods of the deceased. See Administration of Estates.

AD COMMUNE NOCUMENTUM. To the common nuisance. Broom & H.Com. 196.

AD COMMUNEM LEGEM. At common law, the name of a writ of entry (now obsolete) brought by the reversioners after the death of the life tenant, for the recovery of lands wrongfully alienated by him.

AD COMPARENDUM. To appear. Ad *comparendum, et ad standum juri,* to appear and to stand to the law, or abide the judgment of the court. Cro.Jac. 67.

AD COMPUTUM REDDENDUM. To render an account. St.Westm. 2, c. 11.

AD CULPAM. Until misbehavior.

AD CURIAM. At a court. 1 Salk. 195. To court. *Ad curiam vocare,* to summon to court.

AD CUSTAGIA. At the costs. Toullier; Cowell; Whishaw.

AD CUSTUM. At the cost. 1 Bl.Comm. 314.

AD DAMNUM. In pleading. "To the damage." The technical name of that clause of the writ or declaration which contains a statement of the plaintiff's money loss, or the damages which he claims. Vincent v. Life Ass'n, 75 Conn. 650, 55 Atl. 177.

AD DEFENDENDUM. To defend. 1 Bl.Comm. 227.

AD DIEM. At a day; at the day. Townsh.Pl. 23. *Ad alium diem.* At another day. Y.B. 7 Hen. VI, 13. *Ad certum diem,* at a certain day. 2 Strange, 747. *Solvit ad diem;* he paid at or on the day. 1 Chit.P1. 485.

AD EA QUZE FREQUENTIUS ACCIDUNT JURA ADAPTANTUR. Laws are adapted to those cases which most frequently occur. 2 Inst. 137; Broom, Max. 43.

Laws are adapted to cases which frequently occur. A statute, which, construed according to its plain words, is, in all cases of ordinary occurrence, in no degree inconsistent or unreasonable, should not be varied by construction in every case, merely because there is one possible but highly improbable case in which the laW would operate with great severity and against our notions of justice. The utmost that can be contended is that the construction of the statute should be varied in that particular case, so as to obviate the injustice. 7 Exch. 549; 8 Exch. 778.

AD EFFECTUM. To the effect, or end. Co.Litt. 204a; 2 Crabb, Real Prop. p. 802, § 2143. *Ad effectum sequentem,* to the effect following. 2 Salk. 417.

AD EVERSIONEM JURIS NOSTRI. To the overthrow of our right. 2 Kent 91.

AD EXCAMBIUM. For exchange; for compensation. Bract. fol. 12b, 37b.

AD EXHIEREDATIONEM. To the disherison, or disinheriting; to the injury of the inheritance. 3 Bl.Comm. 288.

Formal words in the old writ of waste, which calls upon, the tenant to appear and show cause why he hath committed waste and destruction in the place named, ad *exhcere-dationem,* etc. ; Fitzherbert, Nat. Bev. 55.

AD EXITUM. At issue; at the end (of the pleadings.) Steph.P1. 24.

AD FACIENDUM. To do. Co.Litt. 204a. *Ad faciendum, sub jiciendum et recipiendum;* to do, submit to, and receive. *Ad faciendam juratamillam;* to make up that jury. Fleta, lib. 2, c. 65, § 12.

AD FACTUM PR1ESTANDUM. In Scotch law, a name descriptive of a class of obligations marked by unusual severity. A debtor *ad fac. prces.* is denied the benefit of the act of grace, the privilege of sanctuary, and the *cessio bonorum;* Erskine, Inst. lib. 3, tit. 3, § 62; Kames, Eq. 216.

AD FEODI FIRMAM. To fee farm. Fleta, lib. 2, c. 50, § 30.

AD FIDEM. In allegiance. 2 Kent, Comm. 56. Subjects born *ad fidem* are those born in allegiance.

AD FILUM AQU1E. To the thread of the water; to the central line, or middle of the stream. *Usque ad filum aquce,* as far as the thread of the stream. Bract. fol. 208b; 235a. A phrase of frequent occurrence in modern law; of which *ad medium filum aquce (q.* v.) is another form, and etymologically more exact.

AD FILUM VIZE. To the middle of the way; to the central line of the road. Parker v. Inhabitants of Framingham, 8 Mete. (Mass.) 260.

AD FINEM. Abbreviated *ad fin.* To the end. It is used in citations to books, as a direction to read from the place designated to the end of the chapter, section, etc. *Ad finem litis,* at the end of the suit.

AD FIRMAM. To farm. Derived from an old Saxon word denoting rent. *Ad firmam noctis* was a fine or penalty equal in amount to the estimated cost of entertaining the king for one night. Cowell. *Ad feodi firmam,* to fee farm. Spelman.

AD FUNDANDAM JURISDICTIONEM. To make the basis of jurisdiction. [1905] 2 K.B. 555.

AD GAOLAS DELIBERANDAS. To deliver the gaols; to empty the gaols. Bract. fol. 109b. *Ad gaolam deliberandam;* to deliver the gaol; to make gaol delivery. Bract. fbl. 110b.

AD GRAVAMEN. To the grievance, injury, or oppression. Fleta, lib. 2, c. 47, § 10.

AD HOC. For this; for this special purpose.

An attorney ad hoc, or a guardian or curator ad hoc,. is one appointed for a special purpose, generally to represent the client or infant in the particular action in which the appointment is made. Bienvenu v. Insurance Co., 33 La. Ann. 212.

AD HOMINEM. To the person. A term used in logic with reference to a personal argument.

AD HUNC DIEM. At this day. 1 Leon. 90.

AD IDEM. To the same point, or effect. *Ad idem facit,* it makes to or goes to establish the same point. Bract. fol. 27b.

AD INDE. Thereunto. *Ad inde requisitus,* thereunto required. Townsh.Pl. 22.

AD INFINITUM. Without limit; to an infinite extent; indefinitely.

AD INQUIRENDUM. To inquire; a writ of inquiry; a judicial writ, commanding inquiry to be made of anything relating to a cause pending in court. Cowell.

AD INSTANTIAM. At the instance. 2 Mod. 44. *Ad instantiam partis,* at the instance of a party. Hale, Com.Law, 28.

AD INTERIM. In the meantime. An officer *ad interim* is one appointed to fill a temporary vacancy, or to discharge the duties of the office during the absence or temporary incapacity of its regular incumbent.

AD JUDICIUM. To judgment; to court. *Ad judicium provocare;* to summon to court; to commence an action; a term of the Roman law. Dig. 5, 1, 13, 14.

AD JUNGENDUM AUXILIUM. To joining in aid; to join in aid. See Aid Prayer.

AD JURA REGIS. To the rights of the king; a writ which was brought by the king's clerk, presented to a living against those who endeavored to eject him, to the prejudice of the king's title. Reg. Writs 61.

AD LARGUM. At large: as, title at large; assize at large. See Dane, Abr. c. 144, art. 16, § 7. Also at liberty; free, or unconfined. *Ire ad largum,* to go at large. Plowd. 37.

At large; giving details, or particulars; *in extenso.* A special verdict was formerly called a verdict at large. Plowd. 92.

AD LIBITUM. At pleasure. 3 Bla.Com. 292.

AD LITEM. For the suit; for the purposes of the suit; pending the suit. A guardian *ad litem* is a guardian appointed to prosecute or defend a suit on behalf of a party incapacitated by infancy or otherwise.

AD LUCRANDUM VEL PERDENDUM. For gain or loss. Emphatic words in the old warrants of attorney. Reg. Orig. 21, et seq. Sometimes expressed in English, "to lose and gain." Plowd. 201.

AD MAJOREM CAUTELAM. For greater security. 2 How.State Tr. 1182.

AD MANUM. At hand; ready for use. *Et querens sectam habeat ad manum;* and the plaintiff immediately have his suit ready. Fleta, lib. 2, c. 44, § 2.

AD MEDIUM FILUM AQU,E. To the middle thread of the stream. See Ad Filum Aquas.

AD MEDIUM FILUM VISE. To the middle thread of the way.

AD MELIUS INQUIRENDUM. A writ directed to a coroner commanding him to hold a second inquest. See 45 Law J.Q.B. 711.

AD MORDENDUM ASSUETUS. Accustomed to bite. Cro.Car. 254. A material averment in declarations for damage done by a dog to persons or animals. 1 Chit.P1. 388; 2 Chit.P1. 597.

AD NOCUMENTUM. To the nuisance, or annoyance; to the hurt or injury. Fleta, lib. 2, c. 52, § 19. *Ad nocumentum liberi tenementi sui,* to the nuisance of his freehold. Formal words in the old assise of nuisance. 3 Bl.Comm. 221.

AD OFFICIUM JUSTICIARIORUM SPECTAT, UNICUIQUE CORAM EIS PLACITANTI JUSTITIAM EXHIBERE. It is the duty of justices to administer justice to every one pleading before them. 2 Inst. 451.

AD OMISSA VEL MALE APPRETIATA. With relation to omissions or wrong interpretations. 3 Ersk.Inst. 9, § 36.

AD OPUS. To the work. See 21 Harv.L.Rev. 264, citing 2 Poll. & Maitl. 232 *et seq.;* Use.

AD OSTENDENDUM. To show. Formal words in old writs. Fleta, lib. 4, c. 65, § 12.

AD OSTIUM ECCLESIZE. At the door of the church. One of the five species of dower formerly recognized by the English law. 1 Washb.Real Prop. 149; 2 Bl.Comm. 132.

AD PIOS USUS. Lat. For pious (religious or charitable) uses or purposes. Used with reference to gifts and bequests.

AD PROSEQUENDAM. To prosecute. 11 .Mod. 362.

Ad proximum antecedens fiat relatio nisi impediatur sententia. Relative words refer to the nearest antecedent, unless it be prevented by the context. Jenk.Cent. 180; Brown v. Brown, Del., 3 Terry 157, 29 A.2d 149, 153.

AD PUNCTUM TEMPORIS. At the point of time. Sto.Bailm. § 263.

AD QUIERIMONIAM. On complaint of.

AD QUAESTIONEM FACTI NON RESPONDENT JUDICES, AD QUAESTIONEM JURIS NON RESPONDENT JURATORES. Means that juries must answer to questions of fact and judges to questions of law. Ex parte United States, C.C.A. Wis., 101 F.2d 870, 874.

AD QUEM. To which.

A term used in the computation of time or distance, as correlative to a *quo;* denotes the end or terminal point. See A Quo.

The *terminus a quo* is the point of beginning or departure; the *terminus ad quem,* the end of the period or point of arrival.

AD QUESTIONES FACTI NON RESPONDENT JUDICES; AD QUESTIONES LEGIS NON RESPONDENT JURATORES. Judges do not answer questions of fact; juries do not answer questions of law. 8 Coke, 308; Co.Litt. 295.

AD QUESTIONES LEGIS JUDICES, ET NON JURATORES, RESPONDENT. Judges, and not jurors, decide questions of law. 7 Mass. 279.

AD QUOD CURIA CONCORDAVIT. To which the court agreed. Yearb.P. 20 Hen. VI. 27.

AD QUOD DAMNUM. The name of a writ formerly issuing from the English chancery, commanding the sheriff to make inquiry "to what damage" a specified act, if done, will tend.

It is a writ which ought to be sued before the king grants certain liberties, as a fair, market, or such like, which may be prejudicial to others, and thereby it should be inquired whether it will be a prejudice to grant them, and to whom it will be prejudicial, and what prejudice 'will come thereby. Termes de la Ley.

There is also another writ of *ad quod damnum,* if any one will turn a common highway and lay out another way as beneficial. Termes de la Ley.

The writ of *ad quod damnum* is a common-law writ, in the nature of an original writ, issued by the prothonotary, and in condemnation proceedings is returnable to and subject to confirmation of the Superior Court. Elbert v. Scott, Del., 5 Boyce 1, 90 A. 587.

AD QUOD NON FUIT RESPONSUM. To which there was no answer.

A phrase used in the reports, where a point advanced in argument by one party was not denied by the other; or where a point or argument of counsel was not met or notice by the court; or where an objection was met by the court, and not replied to by the counsel who raised it. 3 Coke, 9; 4 Coke, 40.

AD RATIONEM PONEJE. To cite a person to appear. A technical expression in the old records of the Exchequer, signifying, to put to the bar and interrogate as to a charge made; to arraign on a trial.

AD RECOGNOSCENDUM. To recognize. Fleta, lib. 2, c. 65, § 12. Formal words in old writs.

AD RECTE DOCENDUM OPORTET, PRIMUM INQUIRERE NOMINA, QUIA RERUM COGNITIO A NOMINIBUS RERUM DEPENDET. In order rightly to comprehend a thing, inquire first into the names, for a right knowledge of things depends upon their names. Co.Litt. 68.

AD RECTUM. (L. Lat.) To right. To do right. To meet an accusation. To answer the demands of the law. *Habeant eos ad rectum.* They shall render themselves to answer the law, or to make satisfaction. Bract. fol. 124 b.

AD REPARATIONEM ET SUSTENTATIONEM. For repairing and keeping in suitable condition.

AD RESPONDENDUM. For answering; to make answer; words used in certain writs employed for bringing a person before the court to make answer in defense in a proceeding, as in *habeas corpus ad respondendum* and *capias ad respondendum, q. v.*

AD SATISFACIENDUM. To satisfy. The emphatic words of the writ of *capias ad satisfaciendum,* which requires the sheriff to *take* the person of the defendant *to satisfy* the plaintiff's claim.

AD SECTAM. At the suit of. Commonly abbreviated to *ads.*

Used in entering and indexing the names of cases, where it is desired that the name of the defendant should come first. Thus, "B. *ads.* A." indicates that B. is defendant in an action brought by A., and the title so written would be an inversion of the more usual form "A. v. B."

AD STUDENDUM ET ORANDUM. For studying and praying; for the promotion of learning and religion. A phrase applied to colleges and universities. 1 Bl.Comm. 467.

AD TERMINUM ANNORUM. For a term of years.

AD TERMINUM QUI PRIETERIT. For a term which has passed. Words in the Latin form of the writ of entry employed at common law to recover, on behalf of a landlord, possession of premises, from a tenant holding over after the expiration of the term for which they were demised. See Fitzh. Nat.Brev. 201.

AD TRISTEM PARTEM STRENUA EST SUSPICIO. Suspicion lies heavy on the unfortunate side.

AD TUNC ET IBIDEM. In pleading, the Latin name of that clause of an indictment containing the statement of the subject-matter "then and there being found."

AD ULTIMAN VIM TERMINORUM. To the most extended import of the terms; in a sense as universal as the terms will reach. 2 Eden, 54.

AD USUM ET COMMODUM. To the use and benefit.

AD VALENTIAM. To the value. See Ad Valorem.

AD VALOREM. According to value. Powell v. Gleason; Ariz., 74 P.2d 47, 50, 114 A.L.R. 838.

Duties are either *ad valorem* or *specific;* the former when the duty is laid in the form of a percentage on the value of the property ; the latter where it is imposed as a fixed sum on each article of a class without regard to its value. The term ad *valorem* tax means a tax or duty upon the value of the article or thing subject to taxation. Arthur v. Johnston, 185 S.C. 324, 194 S.E. 151, 154.

AD VENTREM INSPICIENDUM. To *inspect* the womb. A writ for the summoning of a jury of matrons to determine the question of pregnancy.

AD VIM MAJOREM VEL AD CASUS FORTUITUS NON TENETUR QUIS, NISI SUA CULPA INTERVENERIT. No one is held to answer for the effects of a superior force, or of accidents, unless his own fault has contributed. Fleta, lib. 2, c. 72, § 16.

AD VITAM. For life. Bract. fol. 13b. *In feodo, vel ad vitam;* in fee, or for life. Id.

AD VITAM AUT CULPAM. For life or until fault. Words descriptive of a tenure of office "for life or good behavior," equivalent to quam*diu bene se gesserit.*

AD VOLUNTATEM. At will. Bract. fol. 27a. *Ad voluntatem domini,* at the will of the lord.

AD WARACTUM. To fallow. Bract. fol. 228b. See Waractum.

ADAPTED. Capable of use. People v. Dorrington, 221 Mich. 571, 191 N.W. 831, 832. Indicates that the object referred to has been made suitable; has been made to conform to ; has been made fit by alteration. Raynor v. United States, C.C.A.Ind., 89 F.2d 469, 471.

ADAWLUT. Corrupted from *Adalat,* justice, equity; a court of justice. The terms "Dewanny Adawlut" and "Foujdarry Adawlut" denote the civil and criminal courts of justice in India. Wharton,

ADCORDABILIS DENARII. Money paid by a vassal to his lord upon the selling or exchanging of a feud. Enc. Lond,

ADD. To unite; attach; annex; join. Board of Com'rs of Hancock County v. State, 119 Ind. 473, 22 N.E. 10.

ADDENDUM. A thing that is added or to be added; a list or section consisting of added material.

ADDICERE. Lat. In the civil law, to adjudge or condemn; to assign, allot, or deliver; to sell. In the Roman law, *addico* was one of the three words used to express the extent of the civil jurisdiction of the praetors.

ADDICT. As defined in Acts 1894, No. 157, one who has acquired the habit of using spirituous liquors or narcotics to such an extent as to deprive him of reasonable self-control. Interdiction of Gasquet, 147 La. 722, 85 So. 884, 888.

ADDICTIO. In the Roman law, the giving up to a creditor of his debtor's person by a magistrate; also the transfer of the (deceased) debtor's goods to one who assumes his liabilities.

Additio probat minoritatem. An addition [to a name] proves or shows minority or inferiority. 4 Inst. 80; Wing.Max. 211, max. 60. That is, if it be said that a man has a fee tail, it is less than if he has the fee.

This maxim is applied by Lord Coke to courts, and, terms of law; *minoritas* being understood in the sense of difference, inferiority, or qualification. Thus, the style of the king's bench is *coram rege,* and the style of the court of chancery is *coram domino rege in cancellaria;* the addition showing the difference. 4 Inst. 80. By the word "fee" is intended *fee-simple,* fee-tail not being intended by it, unless there. be added to it the *addition* of the word "tail." 2 Bl.Comm. 106; Litt. § 1.

ADDITION. Implies physical contact, something added to another. Structure physically attached to or connected with building itself. Mack v. Eyssell, 332 Mo. 671, 59 S.W.2d 1049; Washington Loan & Trust Co. v. Hammond, 51 App.D.C. 260, 278 F. 569, 571.

Extension; increase; augmentation. Meyering v. Miller, 330 Mo. 885, 51 S.W.2d 65, 66.

That which has become united with or a part of. Judge v. Bergman, 258 Ill. 246, 101 N.E. 574, 576.

### French Law

A supplementary process to obtain additional information. Guyot, Repert.

### Insurance

The word "addition," as applied to buildings, usually means a part added or joined to a main building. Agnew v. Sun Ins. Office, 167 Wis. 456, 167 N.W. 829. It may also apply to buildings appurtenant to some other building though not actually in physical contact therewith. Taylor v. Northwestern Nat. Ins. Co., 34 Cal.App. 471, 167 P. 899. Not limited to structures physically a part of the main building. Gertner v. Glens Falls Ins. Co., 184 N.Y.S. 669, 670, 193 App.Div. 836,

### Liens

Within the meaning of the mechanic's lien law, an "addition" to a building must be a lateral addition. Lake & Risley Co. v. Still, 7 N.J.Misc. 47, 144 A. 110. It must occupy ground without the limits of the building to which it constitutes an addition, so that the lien shall be upon the building formed by the addition and the land upon which it stands. Updike v. Skillman, 27 N.J.L. 132. See also, Lamson v. Maryland Casualty Co., 196 Iowa 1185, 194 N.W. 70, 71.

An alteration in a former building, by adding to its height, or to its depth, or to the extent of its interior accommodations, is merely an "alteration," and not an "addition." Putting a new story on an old building is not an addition. Updike v. Skillman, 27 N.J.L. 132. See, also, Lamson v. Maryland Casualty Co., 196 Iowa 1185, 194 N.W. 70, 71.

Did not include new livestock acquired by mortgagor after execution of mortgage. American State Bank of Watertown v. Boyle, 212 Minn. 293, 4 N.W.2d 108, 109.

### Name

Whatever is added to a man's name by way of title or description. Cowell.

In English law, there are four kinds of *additions,—additions* of *estate,* such as yeoman, gentleman, esquire; additions of *degree,* or names of dignity, as knight, earl, marquis, duke; additions of *trade,* mystery, or occupation, as scrivener, painter, mason, carpenter; and additions of *place* of residence, as London, Chester, etc. The only additions recognized in American law are those of mystery and residence.

At common law there was no need of addition in any case; 2 Ld.Raym. 988; it was required only by stat. 1 Hen. V. c. 5, in cases where process of outlawry lies. In all other cases it is only a description of the person, and common reputation is sufficient; 2 Ld.Raym. 849.

ADDITIONAL. This term embraces the idea of joining or uniting one thing to another, so as thereby to form one aggregate. Ex parte Boddie, 200 S.C. 379, 21 S.E.2d 4, 8.

"Additional security" imports a security, which, united with or joined to the former one, is deemed to make it, as an aggregate, sufficient as a security from the beginning. State v. Hull, 53 Miss. 626; Searcy v. Cullman County, 196 Ala. 287, 71 So. 664, 665.

ADDITIONAL BURDEN. See Eminent Domain.

ADDITIONAL INSURED. A person using another's automobile, which is covered by liability policy containing statutory omnibus clause, only when insured's permission is expressly or impliedly given for particular use. Stewart v. City of Rio Vista, 72 Cal.App.2d 279, 164 P.2d 274, 275.

Driver chosen by friend to whom automobile was entrusted by husband who had possession with direct permission of wife in whose name record title lay was not additional insured. Fox v. Crawford, Ohio App., 80 N.E.2d 187, 189.

Where driver of automobile at time it struck pedestrian was using automobile for his own purpose after having received permission from owner only to get automobile

started and return automobile to owner's home, driver was not additional insured. Howe v. Farmers Auto. Inter-Insurance Exchange; Wash., 202 P.2d 464, 472.

ADDITIONAL LEGACY. See Legacy.

ADDITIONAL SERVITUDE. The imposition of a new and additional easement or servitude on land originally taken by eminent domain proceedings, a use of a different character, for which owner of property is entitled to compensation. S. D. Childs & Co. v. City of Chicago, 198 Ill.App. 590, 593; Williams v. Meridan Light & Ry. Co., 110 Miss. 174, 69 So. 596, 597.

ADDITIONAL WORK. Of nature involved in modifications and changes, not independent project. Maryland Casualty Co. v. City of South Norfolk, C.C.A.Va., 54 F.2d 1032, 1037. Work which results from a change or alteration in plans concerning work which has to be done under a contract, while "extra work" relates to work which is not included within the contract itself. De Martini v. Elade Realty Corp., Co.Ct., 52 N.Y.S.2d 487, 489.

ADDITIONALES. In the law of contracts. Additional terms or propositions to be added to a former agreement.

ADDITUR. The power of trial court to assess damages or increase amount of an inadequate award made by jury verdict, as condition of denial of motion for new trial, with consent of defendant whether or not plaintiff consents to such action. Dorsey et al. v. Barba et al., 226 P.2d 677.

ADDLED. Stupid, muddled, foolish. Windham v. State, 93 Tex.Cr.R. 477, 248 S.W. 51, 54.

ADDLED PARLIAMENT. The parliament which met in 1614. It sat for but two months and none of its bills received the royal assent. Taylor, Jurispr. 359.

ADDONE, Addonne. L. Fr. Given to. Kelham.

ADDRESS. Place where mail or other communications will reach person. Munson v. Bay State Dredging & Contracting Co., 314 Mass. 435, 50 N.E.2d 633, 636. Generally a place of business or residence.

Equity

Part of a bill wherein is given the appropriate and technical description of the court in which the bill is filed.

Legislation

A formal request addressed to the executive by one or both branches of the legislative body, requesting him to perform some act.

It is provided as a means for the removal of judges deemed unworthy, though the causes of removal would not warrant impeachment. It is not provided for in the Constitution of the United States; and even in those states where the right exists it is exercised but seldom.

Offense

Not synonym of hazard, but an antonym, and, as respects gaming and devices, means skillful management, dexterity, or adroitness. In re Wigton, 151 Pa.Super. 337, 30 A.2d 352, 355.

ADDRESS TO THE CROWN. When the royal speech has been read in Parliament, an address in answer thereto is moved in both houses. Two members are selected in each house by the administration for moving and seconding the address. Since the commencement of the session 1890-1891, it has been a single resolution expressing their thanks to the sovereign for his gracious speech.

ADDUCE. To present, bring forward, offer, introduce. Used particularly with reference to evidence. Tuttle v. Story County, 56 Iowa 316, 9 N.W. 292.

Broader in its signification than the word "offered." Beatty v. O'Connor, 106 Ind. 81, 5 N.E. 880; Brown v. Griffin, 40 Ill.App. 558.

ADEEM. To take away, recall, or revoke. To satisfy a legacy by some gift or substituted disposition, made by the testator, in advance. Tolman v. Tolman, 85 Me. 317, 27 Atl. 184. Woodburn Lodge No. 102, I. 0. 0. F., v. Wilson, 148 Or. 150, 34 P.2d 611, 614. See Ademption.

If the identical thing bequeathed is not in existence, or has been disposed of, the legacy is "adeemed" and the legatee's rights are gone. Lange v. Lange, 127 N.J.Eq. 315, 12 A.2d 840, 843; Welch v. Welch, 147 Miss. 728, 113 So. 197, 198.

ADELANTADO. In Spanish law, the military and political governor of a frontier province. This office has long since been abolished. Also a president or president judge; a judge having jurisdiction over a kingdom, or over certain provinces only. So called from having authority over the judges of those places. Las Partidas, pt. 3, tit. 4, 1. 1.

ADELING, or ATHELING. Noble; excellent. A title of honor among the Anglo-Saxons, properly belonging to the king's children. Spelman.

ADEMPTIO. Lat. In the civil law, a revocation of a legacy; an ademption. Inst. 2, 21, pr. Where it was expressly transferred from one person to another, it was called *translatio.* Inst. 2, 21, 1; Dig. 34, 4.

ADEMPTION. Extinction or withdrawal of legacy by testator's act equivalent to revocation or indicating intention to revoke. Tagnon's Adm'x v. Tagnon, 253 Ky. 374, 69 S.W.2d 714.

Removal. Lewis v. Hill, 387 Ill. 542, 56 N.E.2d 619, 621. Testator's giving to a legatee that which he has provided in his will, or his disposing of that part of his estate so bequeathed in such manner as to make it impossible to carry out the will. Hurley v. Schuler, 296 Ky. 118, 176 S.W.2d 275, 276. Revocation, recalling, or cancellation, of a legacy, according to the apparent intention of the testator, implied by the law from acts done by him in his life, though such acts do not amount to an express revocation of it. Burnham v. Comfort, 108 N.Y. 535, 15 N.E. 710.

The act by which the testator pays to his legatee, in his life-time, a general legacy which by his will he had proposed to give him at his death, 1 Rop.Leg. p. 365; and the act by which a specific legacy has become inoperative on account of the testator having parted with the subject. Dillender v. Wilson, 228 Ky. 758, 16 S.W.2d 173, 174.

See Advancement.

ADEO. Lat. So, as. *Adeo plene et integre,* as fully and entirely. 10 Coke, 65.

ADEQUATE. Sufficient; proportionate; equally efficient; equal to what is required; suitable to the case or occasion; satisfactory. Nagle v. City of Billings, 77 Mont. 205, 250 P. 445, 446. Equal to some given occasion or work. Nissen v. Miller, 44 N.M. 487, 105 P.2d 324, 326. Commensurate; it does not mean average or graduation. Vandermade v. Appert, 125 N.J.Eq. 366, 5 A.2d 868, 871.

ADEQUATE CARE. Such care as a man of ordinary prudence would himself take under similar circumstances to avoid accident; care proportionate to the risk to be incurred. Wallace v. Wilmington & N. R. Co., 8 Houst. (Del.) 529, 18 Atl. 818.

ADEQUATE CAUSE. suffiicient cause for a particular purpose. Pennsylvania & N. Y. Canal & R. Co. v. Mason, 109 Pa. 296, 58 Am.Rep. 722.

In criminal law, adequate cause for the passion which reduces a homicide committed under its influence from the grade of murder to manslaughter, means such cause as would commonly produce a degree of anger, rage, resentment, or terror, in a person of ordinary temper, sufficient to render the mind incapable of cool reflection. Insulting words or gestures, or an assault and battery so slight as to show no intention to inflict pain or injury, or an injury to property unaccompanied by violence are not adequate causes. Vollintine v. State, 77 Tex.Cr.R. 522, 179 S.W. 108; Berry v. State, 157 S.W.2d 650, 652, 143 Tex.Cr.R. 67. See Adequate Provocation.

ADEQUATE COMPENSATION. Just value of property taken under power of eminent domain, payable in money. Buffalo, etc., R. Co. v. Ferris, 26 Tex. 588. Market value of property when taken. Louisiana Highway Commission v. Guidry, 176 La. 389, 146 So. 1, 5. It includes interest. Texarkana & Ft. S. Ry. Co. v. Brinkman, Tex.Civ. App., 288 S.W. 852, 853. It may include the cost or value of the property to the owner for the purposes for which he designed it. Elbert County v. Brown, 16 Ga.App. 834, 86 S.E. 651, 656.

Such only as puts injured party in as good a condition as he would have been in if injury had not been inflicted. Town of Winchester v. Cox, 129 Conn. 106, 26 A.2d 592, 597.

ADEQUATE CONSIDERATION. One which is equal, or reasonably proportioned, to the value of that for which it is given. 1 Story, Eq.Jur. §§ 244-247. One which is not so disproportionate as to shock our sense of that morality and fair dealing which should always characterize transactions between man and man. U. S. Smelting, Refining & Milling Co. v. Utah Power & Light Co., 197 P. 902, 905, 58 Utah, 168. Fair and reasonable under circumstances. Boulenger v. Morison, 88 Cal.App. 664, 264 P. 256, 259. Reasonably just and equitable. Laguna Land & Water Co. v. Greenwood, 92 Cal.App. 570, 268 P. 699, 700.

ADEQUATE OR REASONABLE FACILITIES. Such railroad facilities as might be fairly demanded, with regard to size of place, extent of demand for transportation, cost of furnishing additional accommodation asked for, and to all other facts which would have bearing upon question of convenience and cost. Kurn v. State, 175 Okl. 379, 52 P.2d 841, 843.

ADEQUATE PREPARATION. Embraces full consultation with accused, interviews with witnesses, study of facts and law, and determination of character of defense to be made and policy to be followed during trial. Nelson v. Commonwealth, 295 Ky. 641, 175 S.W.2d 132, 133.

ADEQUATE PROVOCATION. An adequate provocation to cause a sudden transport of passion that may suspend the exercise of judgment and exclude premeditation and a previously formed design is one that is calculated to excite such anger as might obscure the reason or dominate the volition of an ordinary reasonable man. Commonwealth v. Webb, 252 Pa. 187, 97 A. 189, 191.

ADEQUATE REMEDY. One vested in the complainant, to which he may at all times resort at his own option, fully and freely, without let or hindrance. Wheeler v. Bedford, 7 A. 22, 54 Conn. 244; State ex rel. Heimov v. Thomson, 131 Conn. 8, 37 A.2d 689, 692. Suitable, proportionate, or sufficient. Fischer v. Damm, 36 Ohio App. 515, 173 N.E. 449, 451.

A remedy which is plain and complete and as practical and efficient to the ends of justice and its prompt administration as the remedy in equity. Farmers & Traders Bank v. Kendrick, 341 Mo. 571, 108 S.W.2d 62, 64.

A remedy that affords complete relief with reference to the particular matter in controversy, and is appropriate to the circumstances of the case. State v. Huwe, 103 Ohio St. 546, 134 N.E. 456, 459. A remedy to be adequate, precluding resort to mandamus, must not only be one placing relator in statu quo, but must itself enforce in some way performance of the particular duty. State v. Erickson, 104 Conn. 542, 133 A. 683, 686. Must reach end intended, ane, actually compel performance of duty in question. Buchanan v. Buchanan, 124 Va. 255, 6 S.E.2d 612, 620. Must be plain, accurate, certain, speedy, specific, and appropriate to the particular circumstances, and must also be equally as convenient, beneficial, and effective as the remedy by mandamus. Simpson v. Williams Rural High School Dist., Tex.Civ.App., 153 S.W.2d 852, 856.

ADESSE. In the civil law; to be present; the opposite of *abesse.* Calvin.

ADEU. Without day, as when a matter is finally dismissed by the court. *Alez adeu,* go without day. Y. B. 5 Edw. II. 173. See Adieu.

ADFERRUMINATIO. In the civil law, the welding together of iron; a species of *adjunctio, (q. v.).* Called also *ferruminatio.* Mackeld.Rom.Law, § 276; Dig. 6, 1, 23, 5.

ADHERENCE. In Scotch law, the name of a form of action by which the mutual obligation of marriage may be enforced by either party. Bell. It corresponds to the English action for the restitution of conjugal rights. Wharton.

ADHERING. Joining, leagued with, cleaving to; as, "adhering to the enemies of the United States."

"Adhering" consists in giving to the United States the loyalty due from a citizen. United States v. Stephan, D.C. Mich., 50 F.Supp. 738, 741.

Any intentional act furthering hostile designs of enemies of the United States, or an act which intentionally strengthens or tends to strengthen enemies of the United States, or which weakens or tends to weaken power of the United States to resist and attack such enemies, constitutes "adhering" to such enemies. United States v. Haupt, D.C. Ill., 47 F.Supp. 836, 839.

Rebels, being citizens: are not "enemies," within the meaning of the constitution; hence a conviction for treason, in promoting a rebellion, cannot be sustained under that branch of the constitutional definition which speaks of "adhering to their enemies, giving them aid and comfort."' United States v. Greathouse, 2 Abb.U.S. 364, Fed.Cas.No. 15,254.

ADHESION. The entrance of another state into an existing treaty with respect only to a part of the principles laid down or the stipulations agreed to. Opp.Int.L. § 533.

Properly speaking, by adhesion the third state becomes a party only to such parts as are specifically agreed to, and by accession it accepts and is bound by the whole treaty. See Accession.

ADHIBERE. In the civil law, to apply; to employ; to exercise; to use. *Adhibere diligentiam,* to use care. *Adhibere vim,* to employ force.

ADIATION. A term used in the laws of Holland for the application of property by an executor. Wharton.

ADIEU. L. Fr. Without day. A common term in the Year Books, implying final dismissal from court.

ADIPOCERE. A waxy substance (chemically margarate of ammonium or ammoniacal soap) formed by the decomposition of animal matter protected from the air but subjected to moisture; in medical jurisprudence, the substance into which a human cadaver is converted which has been buried for a long time in a saturated soil or has lain long in water.

ADIRATUS. Lost; strayed; a price or value set upon things stolen or lost, as a recompense to the owner. Cowell.

ADIT. In mining law, an entrance or approach; a horizontal excavation used as an entrance to a mine, or a vent by which ores and water are carried away; an excavation "in and along a lode," which in statutes of Colorado and other mining states is made the equivalent of a discovery shaft. Electro-Magnetic M. & D. Co. v. Van Auken, 9 Colo. 204, 11 P. 80.

ADITUS. An approach; a way; a public way. Co.Litt. 56a.

ADJACENT. Lying near or close to; sometimes, contiguous; neighboring. Ex parte Jeffcoat, 108 Fla. 207, 146 So. 827. *Adjacent* implies that the two objects are not widely separated, though they may not actually touch, Harrison v. Guilford County, 218 N.C. 718, 12 S.E.2d 269, while *adjoining* imports that they are so joined or united to each other that no third object intervenes. Wolfe v. Hurley, D.C.La., 46 F.2d 515, 521.

A word of flexible meaning, depending upon context and subject matter. U. S. v. Denver & R. G. Ry. Co., D.C. Colo., 31 F. 886; Johnston v. Davenport Brick & Tile Co., D.C.Iowa, 237 F. 668, 669.

Suburbs of city not within limits of another municipality though a long strip of land 10 feet wide connected the property with city limits. Lefler v. City of Dallas, Tex. Civ.App., 177 S.W.2d 231, 235.

ADJECTIVE LAW. The aggregate of rules of procedure or practice. As opposed to that body of law which the courts are established to administer, (called "substantive law,") it means the rules according to which the substantive law is administered. That part of the law which provides a method for enforcing or maintaining rights, or obtaining redress for their invasion. Maurizi v. Western Coal & Mining Co., 321 Mo. 378, 11 S.W.2d 268, 272. Holl.Jur. 61,238.

ADJOINING. The word in its etymological sense, means touching or contiguous, as distinguished from lying near to or adjacent. Broun v. Texas & N. 0. R. Co., Tex.Civ.App., 295 S.W. 670, 674; Plainfield-Union Water Co. v. Inhabitants of City of Plainfield, 84 N.J.Law, 634, 87 A. 448, 450. To be in contact with; to abut upon. State ex rel. Boynton v. Bunton, 141 Kan. 103, 40 P.2d 326, 328. And the same meaning has been given to it when used in statutes. City of New York v. Alheidt, 151 N.Y.S. 463, 464, 88 Misc. 524. See Adjacent.

ADJOURN. To put off; defer; postpone. To postpone action of a convened court or body until another time specified, or indefinitely, the latter being usually called to adjourn *sine die.* Bispham v. Tucker, 2 N.J.L. 253; Reynolds v. Cropsey, 241 N.Y. 389, 150 N.E. 303. To suspend or recess during a meeting which continues in session. Byrd v. Byrd, 193 Miss. 249, 8 So.2d 510, 512.

Suspending business for a time, delaying. Probably, without some limitation, it would, when used with reference to a sale on foreclosure, or any judicial proceeding, properly include the fixing of the time to which the postponement was made. Waldrop v. Kansas City Southern Ry. Co., 131 Ark. 453, 199 S.W. 369, 371, L.R.A.1918B, 1081.

ADJOURNAL. A term applied in Scotch law and practice to the records of the criminal courts. The original records of criminal trials were called "bukis of adiornale," or "books of adjournal," few of which are now extant. An "act of adjournal" is an order of the court of justiciary entered on its minutes.

ADJOURNAMENTUM EST AD DIEM DICERE SEU DIEM DARE. An adjournment is to appoint a day or give a day. 4 Inst. 27. Hence the formula *"eat sine die."*

ADJOURNATUR. L. Lat. It is adjourned. A word with which the old reports very frequently conclude a case. 1 Ld.Raym. 602; 1 Show. 7; 1 Leon. 88.

A continuation of the same meeting, and at such adjourned meeting the governing body can do any act which might have been done if no adjournment had taken place, and limitations imposed on governing body as regards action at original meeting obtain at adjourned meeting. Vogel v. Parker, 118 N.J.L. 521, 193 A. 817, 818. One ordered by board at regular meeting, and which is to convene after termination of such regular meeting and prior to next regular meeting. Byrd v. Byrd, 193 Miss. 249, 8 So.2d 510, 513.

ADJOURNED SUMMONS. A summons taken out in the chambers of a judge, and afterwards taken into court to be argued by counsel.

ADJOURNED TERM. In practice, a continuance, by adjournment, of a regular term. Harris v. Gest, 4 Ohio St. 473; Kingsley v. Bagby, 2 Kan. App. 23, 41 P. 991. Distinguished from an "additional term," which is a distinct term. Harris v. Gest, 4 Ohio St. 473; Kingsley v. Bagby, 2 Kan. App. 23, 41 P. 991. A continuation of a previous or regular term; the same term prolonged, wherein power of court over business which has been done, and the entries made at the regular term, continues. Van Dyke v. State, 22 Ala. 57; Carter v. State, 14 Ga.App. 242, 80 S.E. 533, 534.

ADJOURNMENT. A putting off or postponing of business or of a session until another time or place; the act of a court, legislative body, public meeting, or officer, by which the session or assembly is dissolved, either temporarily or finally, and the business in hand dismissed from consideration, either definitely or for an interval. If the adjournment is final, it is said to be *sine die.* See Johnson City v. Tennessee Eastern Electric Co., 133 Tenn. 632, 182 S.W. 587, 589.

In the civil law a calling into court; a summoning at an appointed time. Due Cange.

ADJOURNMENT DAY. A further day appointed by the judges at the regular sittings at *nisi prius* to try issue of fact not then ready for trial.

ADJOURNMENT DAY IN ERROR. In English practice, a day appointed some days before the end of the term at which matters left undone on the affirmance day are finished. 2 Tidd, Pr. 1176.

ADJOURNMENT IN EYRE. The appointment of a day when the justices in eyre mean to sit again. Cowell; Spelman.

ADJOURNMENT SINE DIE. An adjournment without setting a time for another meeting or session. See Sine Die.

ADJUDGE. To pass on judicially, to decide, settle, or decree, or to sentence or condemn. People v. Rave, 364 Ill. 72, 3 N.E.2d 972, 975.

Judgment of a court of competent jurisdiction; equivalent of convicted and sentenced. In re Tarlo's Estate, 315 Pa. 321, 172 A. 139, 140. Implies a judicial determination of a fact, and the entry of a judgment. Department of Banking v. Hedges, 136 Neb. 382, 286 N.W. 277, 283. Does not mean the same as *deemed* contra, under statute, State v. District Court, 64 Mont. 181, 208 P. 952, 955. Blaufus v. People, 69 N.Y. 107, 25 Am.Rep. 148. Predicated only of an act of the court. Searight v. Com., 13 S. & R. Pa. 301. Compare Drinkhouse v. Van Ness, 202 Cal. 359, 260 P. 869, 874 ; People ex rel. Strohsahl v. Strohsahl, 222 N.Y.S. 319, 324, 221 App. Div. 86.

ADJUDICATAIRE. In Canadian law, a purchaser at a sheriff's sale. See 1 Low.Can. 241; 10 Low. Can. 325.

ADJUDICATE. To settle in the exercise of judicial authority. To determine finally. Synonymous with *adjudge* in its strictest sense. United States v. Irwin, 8 S.Ct. 1033, 127 U.S. 125, 32 L.Ed. 99; Street v. Benner, 20 Fla. 700.

ADJUDICATEE. In French and civil law, the purchaser at a judicial sale. Brent v. New Orleans, 6 So. 793, 41 La.Ann. 1098.

ADJUDICATIO. In the civil law, an adjudication. The judgment of the court that the subject-matter is the property of one of the litigants; confirmation of title by judgment. Mackeld.Rom.Law, § 204.

ADJUDICATION. The giving or pronouncing a judgment or decree in a cause; also the judgment given. People ex rel. Argus Co. v. Hugo, 168 N.Y. S. 25, 27, 101 Misc. 481. Or the entry of a decree by a court in respect to the parties in a case. Samuel Goldwyn, Inc., v. United Artists Corporation, C.C.A.Del., 113 F.2d 703, 706.

It implies a hearing by a court, after notice, of legal evidence on the factual issue involved. Genzer v. Fillip, Tex.Civ.App., 134 S.W.2d 730, 732. The equivalent of a "determination." Campbell v. Wyoming Development Co., 55 Wyo. 347, 100 P.2d 124, 132. And contemplates that the claims of all the parties thereto have been considered and set at rest. Miller v. Scobie, 152 Fla. 328, 11 So.2d 892, 894. The term is principally used in bankruptcy proceedings, the adjudication being the order which declares the debtor to be a bankrupt. First Nat. Bank v. Pothuisje, 217 Ind. 1, 25 N.E.2d 436, 438, 130 A.L.R. 1238.

French Law

A sale made at public auction and upon competition. Adjudications are voluntary, judicial, or administrative. Duverger.

Scotch Law

A species of diligence, or process for transferring the estate of a debtor to a creditor, carried on as an ordinary action before the court of session. A species of judicial sale, redeemable by the debtor. A decreet of the lords of session, adjudging and appropriating a person's lands, hereditaments, or any heritable right to belong to his creditor, who is called the "adjudger," for payment or performance. Bell; Ersk.Inst. c. 2, tit. 12, §§ 39-55; Forb.Inst. pt. 3, b. 1, c. 2, tit. 6.

Adjudication contra hreditatem jacentem. When a debtor's heir apparent renounces the succession, any creditor may obtain a. decree *cognitionis causel,* the purpose of which is that the amount of the debt may be ascertained so that the real estate may be adjudged.

Adjudication in bankruptcy. See Bankruptcy.

Adjudication *in* implement. An action by a grantee against his grantor to compel him to complete the title.

ADJUNCT. Something added to another. New York Trust Co. v. Carpenter, C.C.A.Ohio, 250 F. 668, 672.

An additional judge sometimes appointed in the Court of. Delegates, *q.* v.

ADJUNCTIO. In the civil law, adjunction; a species of *accessio,* whereby two things belonging to different proprietors are brought into firm connection with each other; such as interweaving, *(intertextura);* welding together, *(adferruminatio);* soldering together, *(applumbatura);* painting, *(pictura);* writing, *(scriptura);* building, *(inadificatio);* sewing, (ratio) ; and planting, *(plantatio).* Inst. 2, 1, 26-34; Dig. 6, 1, 23; Mackeld.Rom.Law, § 276. See Accessio.

ADJUNCTION. In civil law, the attachment or union permanently of a thing belonging to one person to that belonging to another. This union may be caused by *inclusion,* as if one man's diamond be set in another's ring, or by *soldering, sewing, construction, writing,* or *painting.*

The common law implicitly adopts the civil law doctrines. See 2 Bla.Com. 404. See Accession.

One associated with another in a subordinate or an auxiliary manner; an associate.

ADJUNCTS. Additional judges sometimes appointed in the Court of Delegates, *q.* v. See Shelford, Lun. 310; 1 Hagg.Eccl.Rep. 384; 2 Id. 84; 3 id. 471.

ADJUNCTUM ACCESSORIUM. An accessory or appurtenance.

ADJURATION. A swearing or binding upon oath.

ADJUST. To settle or arrange; to free from differences or discrepancies; to bring to satisfactory state so that parties are agreed, as to adjust amount of loss by fire. Western Loggers' Machinery Co. v. National Union Fire Ins. Co., 136 Or. 549, 299 P. 311, 312. Controversy to property or estate, In re Sidman's Estate, 278 N.Y.S. 43, 154 Misc. 675. To bring to proper relations; to settle; Jeff Davis County v. Davis, Tex.Civ.App., 192 S.W. 291, 295. To determine and apportion an amount due. Flaherty v. Insurance Co., 46 N.Y.S. 934, 20 App.Div. 275. Accounts are adjusted when they are settled and a balance struck. Townes v. Birchett, 12 Leigh Va. 173, 201. It is sometimes used in the sense of pay. See Lynch v. Nugent, 80 Iowa, 422, 46 N.W. 61. When used in reference to a liquidated claim, Combination Oil & Gas Co. v. Brady, Tex.Civ.App., 96 S.W.2d 415, 416.

ADJUSTED COST BASIS. For income tax purposes, original cost plus additions to capital less depreciation results in the "adjusted cost basis." Herder v. Helvering, 106 F.2d 153, 162, 70 App.D. C. 287.

ADJUSTER. One appointed to adjust a matter, to ascertain or arrange or settle. Commercial Credit Co. v. Macht, 89 Ind.App. 59, 165 N.E. 766. One who makes any adjustment or settlement. Popa v. Northern Ins. Co., 192 Mich. 237, 158 N.W. 945, 946, or who determines the amount of a claim, as a claim against an insurance company. Samchuck v. Insurance Co. of North America, 99 Or. 565, 194 P. 1095. He is a special agent for the person or company for whom he acts. Bond v. National Fire Ins. Co., 77 W.Va. 736, 88 S.E. 389, 394; Howe v. State Bar of California, 212 Cal. 222, 298 P. 25, 27. Compare Manheim v. Standard Fire Ins. Co. of Hartford, Conn., 84 Wash. 16, 145 P. 992.

ADJUSTMENT. An arrangement; a settlement. Henry D. Davis Lumber Co. v. Pacific Lumber Agency, 220 P. 804, 805, 127 Wash. 198.

In the law of insurance, the adjustment of a loss is the ascertainment of its amount and the ratable distribution of it among those liable to pay it; the settling and ascertaining the amount of the indemnity which the assured, after all allowances and deductions made, is entitled to receive under the policy, and fixing the proportion which each underwriter is liable to pay. Marsh.Ins. 4th Ed. 499; 2 Phil.Ins. §§ 1814, 1815; New York v. Insurance Co., 39 N.Y. 45, 100 Am. Dec. 400; Whipple v. Insurance Co., 11 R. I. 139.

ADJUTANT GENERAL. The term "civil adjutant general" is used as one of convenience merely to designate state adjutant general who has not been officially recognized by War Department. People v. Newlon, 77 Colo. 516, 238 P. 44, 47.

ADJUVARI QUIPPE NOS, NON DECIPI, BENEFICIO OPORTET. We ought to be favored, not injured by that which is intended for our benefit. (The species of bailment called "loan" must be to the advantage of the borrower, not to his detriment.) Story, Bailm. § 275. See 8 El. & Bl. 1051.

ADLAMWR. In Welsh law, a proprietor who, for some cause, entered the service of another proprietor, and left him after the expiration of a year and a day. He was liable to the payment of 30 pence to his patron. Wharton.

ADLEGIARE. To purge one's self of a crime by oath.

ADMANUENSIS. A person who swore by laying his hands on the book.

ADMEASUREMENT. Ascertainment by measure; measuring out; assignment or apportionment by measure, that is, by fixed quantity or value, by certain limits, or in definite and fixed proportions.

ADMEASUREMENT OF DOWER. In practice, a remedy which lay for the heir on reaching his majority to rectify an assignment of dower made during his minority, by which the doweress had received more than she was legally entitled to. 2 Bl.Comm. 136; Gilb. Uses, 379.

The remedy is of rare occurrence. Jones v. Brewer, 1 Pick. (Mass.) 314; McCormick v. Taylor, 2 Ind. 336. In some of the states the statutory proceeding enabling a widow to compel the assignment of dower is called "admeasurement of dower."

ADMEASUREMENT OF PASTURE. In English law, a writ which lay between those that have

common of pasture appendant, or by vicinage, in cases where any one or more of them surcharges the common with more cattle than they ought. Bract. fol. 229a; 1 Crabb, Real Prop. p..318, § 358. The remedy is now abolished in England; 3 Sharsw.Bla.Com. 239, n.; and in the United States; 3 Kent 419.

ADMEASUREMENT, WRIT OF. It lay against persons who usurped more than their share, in the two following cases: Admeasurement of dower, and admeasurement of pasture. Termes de la Ley.

ADMENSURATIO. In old English law, admeasurement. Reg.Orig. 156, 157.

ADMEZATORES. In old Italian law, persons chosen by the consent of contending parties, to decide questions between them. Literally, mediators. Spelman.

ADMINICLE. Used as an English word in the statute of 1 Edw. IV, c. 1, in the sense of aid, or support.

In civil law, imperfect proof. Merl. Rêpert. See Adminiculum.

In Scotch law, an aid or support to something else. A collateral deed or writing, referring to another which has been lost, and which it is in general necessary to produce -before the tenor of the lost deed can be proved by parol evidence. Ersk.Inst. b. 4, tit. 1, § 55.

ADMINICULAR. Auxiliary or subordinate to. "The murder would be *adminicular* to the robbery," *(i. e.,* committed to accomplish it.) The Marianna Flora, 3 Mason, 121, Fed.Cas.No.9080.

ADMINICULAR EVIDENCE. Auxiliary or supplementary evidence; such as is presented for the purpose of explaining and completing other evidence. (Chiefly used in ecclesiastical law)

ADMINICULATE. To give adminicular evidence.

ADMINICULATOR. An officer in the Romish church, who administered to the wants of widows, orphans, and afflicted persons. Spelman.

ADMINICULUM. Lat. An adminicle; a prop or support; an accessory thing. An aid or support to something else, whether a right or the evidence of one. It is principally used to designate evidence adduced in aid or support of other evidence, which without it is imperfect. Brown.

ADMINISTER. To manage or conduct. Glocksen v. Holmes, 299 Ky. 626, 186 S.W.2d 634, 637. To discharge the duties of an office; to take charge of business; to manage affairs; to serve in the conduct of affairs, in the application of things to their uses; to settle and distribute the estate of a decedent. Hunter v. City of Louisville, 208 Ky. 562, 271 S.W. 690, 691.

Also, to give, as an oath; to direct or cause to be taken. Gilchrist v. Comfort, 34 N.Y. 239; Brinson v. State, 89 Ala. 105, 8 So. 527; State v. Van Wormer, 103 Kan. 309, 173 P. 1076, 1081.

To apply, as medicine or a remedy; to give, as a dose or something beneficial or suitable. Barfield v. State, 71 Okl.Cr. 195, 110 P.2d 316, 317. To cause or procure a person to take some drug or other substance into his or her system; to direct and cause a medicine, poison, or drug to be taken into the system. State v. Jones, 4 Pennewill (Del.) 109, 53 Atl. 861; McCaughey v. State, 156 Ind. 41, 59 N.E. 169.

Neither fraud nor deception is a necessary ingredient in the act of administering poison. To force poison into the stomach of another; to compel another by threats of violence to swallow poison; to furnish poison to another for the purpose and with the intention that the person to whom it is delivered shall commit suicide therewith, and which poison is accordingly taken by the suicide for that purpose; or to be present at the taking of poison by a suicide, participating in the taking thereof, by assistance, persuasion, or otherwise,—each and all of these are forms and modes of "administering" poison. Blackburn v. State, 23 Ohio St. 146.

ADMINISTRATION. Managing or conduct of an office or employment; the performance of the executive duties of an institution, business, or the like. Webb v. Frohmiller, 52 Ariz. 128, 79 P.2d 510.

In public law, the administration of government means the practical management and direction of the executive department, or of the public machinery or functions, or of the operations of the various organs of the sovereign; direction or oversight of any office, service, or employment. Greene v. Wheeler, C.C.A.Wis., 29 F.2d 468, 469. The term "administration" is also conventionally applied to the whole class of public functionaries, or those in charge of the management of the executive department. House v. Creveling, 147 Tenn. 589, 250 S.W. 357, 358.

ADMINISTRATION EXPENSE. "Administrative expenses" imply disbursements incidental to the management of the estate for which credit would be allowed on a voucher. In re Hooker's Estate, 18 N.Y.S.2d 107, 112, 173 Misc. 515. Those deductible in computing estate tax are merely charges which are proper deductions and in ordinary course of administration will ultimately be allowed. Bourne v. U. S., Ct.C1., 2 F.Supp. 228, 231.

ADMINISTRATION OF ESTATES. Supervision by an executor or administrator. Peterson v. Demmer, D.C.Tex., 34 F.Supp. 697, 700. Management of estate by independent executrix. Palfrey v. Harborth, Tex.Civ.App., 158 S.W.2d 326, 327. Normally involves the collection, management, and distribution of estate, including legal proceedings necessary to satisfy claims of creditors, next of kin, legatees, or whatever other parties may have any claim to property of a deceased person. Hawley v. Hawley, 114 F.2d 745, 748, 72 App.D.C. 376.

The management and settlement of the estate of an intestate, or of a testator who has no executor, performed under the supervision of a court, by a person duly qualified

and legajly appointed, and usually involving (1) the collection of the decedent's assets; (2) payment of debts and claims against him and expenses; (3) distributing the remainder of the estate among those entitled thereto.

The term is applied broadly to denote the management of an estate by an executor, and also the management of estates of minors, lunatics, etc., in those cases where trustees have been appointed by authority of law to take charge of such estates in place of the legal owners. Bouvier; Crow v. Hubard, 62 Md. 565.

Administration is principally of the following kinds, viz.

*Ad colligendum bona defuncti.* To collect the goods of the deceased. Special letters of administration granted to one or more persons, authorizing them to *collect* and preserve the goods of the deceased, are so called. 2 Bl.Comm. 5Q5; 2 Steph.Comm. 241. These are otherwise termed "letters *ad colligendum,"* and the party to whom they are granted, a "collector."

An administrator *ad colligendum* is the mere agent or officer of the court to collect and preserve the goods of the deceased until some one is clothed with authority to administer them, and cannot complain that another is appointed administrator in chief. Flora v. Mennice, 12 Ala. 836.

*Ancillary* administration is auxiliary and subordinate to the administration at the place of the decedent's domicile; it may be taken out in any foreign state or country where assets are locally situated, and is merely for the purpose of collecting such assets and paying debts there.

*Cum testamento annexo.* Administration with the will annexed. Administration granted in cases where a testator makes a will, without naming any executors ; or where the executors who are named in the will are incompetent to act, or refuse to act; or in case of the death of the executors, or the survivor of them. 2 Bl.Comm. 503, 504.

*De bonis non.* Administration of the goods not administered. Administration granted for the purpose of administering such *of the goods* of a deceased person as were *not administered* by the former executor or administrator. Tucker v. Horner, 10 Phila.Pa. 122.

*De bonis non cum testamento annexo.* That which is granted when an executor dies leaving a part of the estate unadministered. Clemens v. Walker, 40 Ala. 189.

*Durante absentia.* That which is granted during the absence of the executor and until he has proved the will.

*Durante minori cetate.* Where an infant is made executor; in which case administration with will annexed is granted to another, during the minority of such executor, and until he shall attain his lawful age to act. See Godo. 102.

*Foreign administration.* That which is exercised by virtue of authority properly conferred by a foreign power.

*Pendente lite.* Administration during the suit. Administration granted during the pendency of a suit touching the validity of a will. 18 N.J.Law, 15, 20.

*Public* administration is such as is conducted (in some jurisdictions) by an officer called the public administrator, who is appointed to administer in cases where the intestate has left no person entitled to apply for letters.

*General* administration. The grant of authority to administer upon the entire estate of a decedent, without restriction or limitation, whether under the intestate laws or with the will annexed. Clemens v. Walker, 40 Ala. 198.

*Special* administration. Authority to administer upon some few particular effects of a decedent, as opposed to authority to administer his whole estate. In re Senate Bill, 12 Colo. 193, 21 P. 482.

Letters of Administration. The instrument by which an administrator or administratriX is authorized by the probate court, surrogate, or other proper officer, to have the charge and administration of the goods and chattels of an intestate. See Mutual Ben. L. Ins. Co. v. Tisdale, 91 U.S. 243, 23 L.Ed. 314.

ADMINISTRATION SUIT. In English practice, a suit brought in chancery, by any one interested, for administration of a decedent's estate, when there is doubt as to its solvency. Stimson.

ADMINISTRATIVE. Connotes of or pertains to administration, especially management, as by managing or conducting, directing, or superintending, the execution, application, or conduct of persons or things. Fluet v. McCabe, Mass., 299 Mass. 173, 12 N.E.2d 89, 93. Particularly, having the character of executive or ministerial action. Mauritz v. Schwind, Tex.Civ.App., 101 S.W.2d 1085, 1090. In this sense, administrative functions or acts are distinguished from such as are judicial. People v. Austin, 46 N.Y.Supp. 526, 20 App.Div. 1. Synonymous with "executive." Sheely v. People, 54 Colo. 136, 129 P. 201, 202; Saint v. Allen, 126 So. 548, 555, 169 La. 1046. An administrative act concerns daily affairs as distinguished from permanent matters. People v. Graham, 70 Colo. 509, 203 P. 277, 278.

ADMINISTRATIVE ACTS. Acts of an officer which are to be deemed as acts of administration. and are commonly called "administrative acts" and classed among those governmental powers properly assigned to the executive department, 'are those acts which are necessary to be done to carry out legislative policies and purposes already declared by the legislative body or such as are devolved upon it by the organic law of its existence. Ex parte McDonough, 27 Cal.App.2d 155, 80 P.2d 485, 487.

ADMINISTRATIVE AGENCY. An agency of the sovereign power charged with administering particular legislation. Examples are compensation and industrial commissions, Joseph H. Weiderhoff, Inc., v. Neal, D.C.Mo., 6 F.Supp. 798, 799; Federal Trade Commission, Hastings Mfg. Co. v. Federal Trade Commission, 153 F.2d 253, certiorari denied 66 S.Ct. 1344, 328 U.S. 853, 90 L.Ed. 1626; tax commissions, First State Bank of Mountainair v. State Tax Commission, 59 P.2d 667, 40 N.M. 319; public service commissions, New York Cent. R. Co. v. Public Service Commission, 7 N.E. 2d 957, 212 Ind. 329; and the like.

ADMINISTRATIVE BOARD. The term is very broad and includes bodies exercising varied functions, some of which involve orders made or other acts done ex parte or without full hearing as to the operative facts, while others are done only after such a notice and hearing, and the functions of the former kind are plainly "administrative" and those of the latter are "quasi judicial". Beaverdale Memorial Park v. Danaher, 127 Conn. 175, 15 A.2d 17, 21.

"Administrative boards" differ from "courts" in that boards frequently represent public interests entrusted to boards, whereas courts are concerned with litigating rights of parties with adverse interests. Rommell v. Walsh, 15 A.2d 6, 9, 127 Conn. 16.

ADMINISTRATIVE DISCRETION. "Administrative discretion" means that the doing of acts or things required to be done may rest, in part at least, upon considerations not entirely susceptible of proof or disproof and at times which considering the circumstances and subject-matter cannot be supplied by the Legislature, and a statute confers such discretion when it refers a commission or officer to beliefs, expectations, or tendencies

instead of facts for the exercise of the powers conferred. Culver v. Smith, Tex.Civ.App., 74 S. W.2d 754, 757.

ADMINISTRATIVE LAW. That branch of public law which deals with the various organs of the sovereign power considered as in motion, and prescribes in detail the manner of their activity, being concerned with such topics as the collection of the revenue, the regulation of the military and naval forces, citizenship and naturalization, sanitary measures, poor laws, coinage, police, the public safety and morals, etc. See Holl.Jur. 305-307.

ADMINISTRATIVE OFFICER. Politically and as used in constitutional law, an officer of the executive department of government, and generally one of inferior rank; legally, a ministerial or executive officer, as distinguished from a judicial officer. People v. Salsbury, 134 Mich. 537, 96 N.W. 936.

One who performs mere ministerial or administrative functions. In re Gold, C.C.A.N.J., 93 F.2d 676, 680. Officers that are neither judicial nor legislative; executive officers, Spivey v. State, 104 P.2d 263, 277, 69 Okl.Cr. 397. Such as: The clerk of circuit court, State ex rel. and to Use of City of St. Louis v. Priest, 348 Mo. 37, 152 S.W.2d 109, 112. Receivers in bank liquidation proceedings, People ex rel. Nelson v. Crawford State Sa[y]. Bank, 310 Ill.App. 533, 34 N.E.2d 872. State highway commissioner, Strobel Steel Const. Co. v. Sterner, 125 N.J.L. 622, 18 A.2d 28, 29.

ADMINISTRATIVE REMEDY. One not judicial, but provided by commission or board created by legislative power. Kansas City Southern R. Co. v. Ogden Levee Dist., C.C.A.Ark., 15 F.2d 637, 642. Against wrongful assessment of benefits by a levee district. Board of Directors of St. Francis Levee Dist. v. St. Louis-San Francisco Ry. Co., C.C.A.Ark., 74 F.2d 183, 188.

ADMINISTRATOR, in the most usual sense of the word, is a person to whom letters of administration, that is, an authority to administer the estate of a deceased person, have been granted by the proper court. A representative of limited authority, whose duties are to collect assets of estate, pay its debts, and distribute residue to those entitled. Smith v. White's Estate, 108 Vt. 473, 188 A. 901, 904. A technical trustee. In re Watkins' Estate, Vt., 41 A.2d 180, 188.

He resembles an executor, but, being appointed by the court, and not by the deceased, he has to give security for the due administration of the estate, by entering into a bond with sureties, called the administration bond. Smith v. Gentry, 16 Ga. 31; Collamore v. Wilder, 19 Kan. 78; Gormley v. Watson, 177 Ga. 763, 171 S.E. 280, 281.

By the law of Scotland the father is what is called the "administrator-in-law" for his children. As such, he is *ipso jure* their tutor while they are pupils, and their curator during their minority. The father's power extends over whatever estate may descend to his children, unless where that estate has been placed by the donor or grantor under the charge of special trustees or managers. This power in the father ceases by the child's discontinuing to reside with him, unless he continues to live at the father's expense; and with re[g]ard to dnu-hte-s, it ceases on their marriage, the husband being the legal curator of his wife. Bell.

Civil Law

A manager or conductor of affairs, especially the affairs of another, in his name or behalf. A manager of public affairs in behalf of others. Calvin. A public officer, ruler, or governor. Nov. 95, gl.; Cod. 12, 8.

Domestic

One appointed at the place of the domicile of the decedent; distinguished from a foreign or an ancillary administrator.

Foreign

One appointed or qualified under the laws of a foreign state or country, where the decedent was domiciled.

Public

An official provided for by statute in some states to administer upon the property of intestates in certain cases. See Rocca v. Thompson, 32 S.Ct. 207, 223 U.S. 317, 56 L.Ed. 453.

ADMINISTRATOR CUM TESTAMENTO ANNEXO. See Cum Testamento Annexo.

ADMINISTRATOR DE BONIS NON. "Administrators de bonis non administratis" are, as the term signifies, persons appointed by the court of probate to administer on the effects of a decedent which have not been included in a former administration. Paul v. Butler, 129 Kan. 244, 282 P. 732, 734.

Where will is set aside as void, administrator subsequently appointed is not "administrator de bonis non," but administrator of entire estate with power to attack nominated executor's report. Douglas' Adm'r v. Douglas' Ex'r, 48 S.W.2d 11, 14, 243 Ky. 321.

ADMINISTRATOR WITH WILL ANNEXED. One appointed administrator of deceased's estate after executors named in will refused to act. In re Kenney's Estate, 41 N.M. 576, 72 P.2d 27, 29, 113 A.L.R. 403.

ADMINISTRATRIX. A woman who administers, or to whom letters of administration have been granted.

ADMINISTRAVIT. Lat. He has administered. Used in the phrase *plene administravit,* which is the name of a plea by an executor or administrator to the 'effect that he has "fully administered" (lawfully disposed of) all the assets of the estate that have come to his hands.

ADMIRAL. Title of high naval officers; they are of various grades,—rear admiral, vice-admiral, admiral, admiral of the fleet, the last named being the highest. But by Act of Jan. 24, 1873 (17 Stat. 418), certain grades ceased to exist when the offices became vacant.

In old English law, a high officer or magistrate that had the government of the king's navy, and the hearing of all causes belonging to the sea. Cowell.

In European law, an officer who presided over the *admiralitas,* or *collegium ammiralitatis.* Locc. de Jur.Mar. lib. 2, c. 2, § 1.

ADMIRALITAS. L. Lat. Admiralty; the admiralty, or court of admiralty.

In European law, an association of private armed vessels for mutual protection and defense against pirates and enemies

ADMIRALTY. A court which has a very extensive jurisdiction of maritime causes, civil and criminal, controversies arising out of acts done upon or relating to the sea, and questions of prize.

It is properly the successor of the consular courts, which were emphatically the courts of merchants and sea-going persons, established in the principal maritime cities on the revival of commerce after the fall of the Western Empire, to supply the want of tribunals that might decide causes arising out of maritime commerce.

Also, the system of jurisprudence relating to and growing out of the jurisdiction and practice of the admiralty courts.

American Law

A tribunal exercising jurisdiction over all maritime contracts, torts, injuries, or offenses. Panama R. Co. v. Johnson, 44 S.Ct. 391, 264 U.S. 375, 68 L.Ed. 748.

"Admiralty" does not extend to all navigable waters, but is limited to the ocean, navigable rivers running into the ocean, and the Great Lakes and their connections. The Frank G. Fobert, D.C.N.Y., 32 F.Supp. 214, 216.

The jurisdiction of the admiral, and the administration of the admiralty law proper—the local maritime law—as it became a judicial function, has passed into the hands of the courts. Renew v. U. S., D.C.Ga., 1 F.Supp. 256, 259.

English Law

The court of the admiral, perhaps erected by Edward III, 3 Bla.Comm. 69, or as early , as the time of Henry I.

The building where the lords of the admiralty transact business.

ADMIRALTY, FIRST LORD OF THE. The normal head of the executive department of state which presides over the naval forces of the kingdom is the lord high admiral, but in practice the functions of the great office are discharged by several Lords Commissioners, of whom one, being the chief, is called the "First Lord," and is a member of the Cabinet. He is assisted by other lords, called Sea Lords, and by various secretaries.

ADMISSIBLE. Pertinent and proper to be considered in reaching a decision. Used with reference to the issues to be decided in any judicial proceeding.

As applied to evidence, the term means that it is of such a character that the court or judge is bound to receive it; that is, allow it to be introduced.

ADMISSION.

Bail

The order of a competent court or magistrate that a person accused of crime be discharged from actual custody upon the taking of bail. People v. Solomon, 15 Pac. 4, 5 Utah, 277.

Admitting to bail is a judicial act to be performed by a court or judicial officer, Trevathan v. Mutual Life Ins. Co. of New York, 166 Or. 515, 113 P.2d 621, 624; and by "allowing bail" or "admitting to bail" is not meant the formal justification, subscription, or acknowledgment by the sureties, the term first mentioned relating to the order determining that the offense is bailable and fixing the amount of undertaking, and "taking the bail': meaning the final acceptance or approval of it by the court. Clatsop County v. Wuopio, 95 Or. 30, 186 P. 547.

English Ecclesiastical Law

The act of the bishop, who, on approval of the clerk presented by the patron, after examination, declares him fit to serve the cure of the church to which he is presented, by the words *"admitto to habilem,"* I admit thee able. 1 Crabb, Real Prop. p. 138, § 123.

Immigration Laws

Authorities accepting alien seaman into body of our inhabitants as possible resident. U. S. ex rel. Georgas v. Day, C.C.A.N.Y., 43 F.2d 917, 919.

Membership in Corporation

The act of a corporation or company by which an individual acquires the rights of a member of such corporation or company.

Practice as Attorney at Law

The act by which attorneys and counsellors become recognized as officers of the court and are allowed to practice.

Testimony or Evidence

Admission or concession by a party in pleading or as evidence. See Admissions.

ADMISSIONALIS. In European law. An usher. Spelman.

ADMISSIONS. Confessions, concessions or voluntary acknowledgments made by a party of the existence of certain facts. Roosevelt v. Smith, 40 N.Y.S. 381, 17 Misc. 323. More accurately regarded, they are statements by a party, or some one identified with him in legal interest, of the existence of a fact which is relevant to the cause of his adversary. Brooks v. Sessoms, 171 S.E. 222, 223, 47 Ga.App. 554. They are against the interest of the party making them. Little Fay Oil Co. v. Stanley, 90 Okl. 265, 217 P. 377, 378.

It is not essential that an "admission" be contrary to interest of party at time it is made; it is enough if it be inconsistent with position which party takes either in pleadings or at trial. Harvey v. Provandie, 83 N.H. 236, 141 A. 136, 140.

The term "admission" is usually applied to civil transactions and to those matters of fact in criminal cases which do not involve criminal intent, while the term "confession" is generally restricted to acknowledgments of guilt. People v. Sourisseau, 62 Cal.App.2d 917, 145 P.2d 916, 923. State v. Lindsey, 26 N.M. 526, 194 P. 877, 878.

An "admission" as applied in criminal cases is the avowal of a fact or of circumstances from which guilt may be inferred, but only tending to prove the offense charged, and not amounting to a confession of guilt. Theis v. State, Ga., 164 S.

E. 456, 457. A statement by defendant of fact or facts pertinent to issues tending, in connection with proof of other facts or circumstances, to prove guilt, but which is, of itself, insufficient to authorize conviction. Commonwealth v. Elliott, 292 Pa. 16, 140 A. 537, 538. Does not include statements which are part of the res gestw. State v. Clark, 102 Mont. 432, 58 P.2d 276, 278.

*Direct,* called also *express,* admissions are those which are made in direct terms.

*Implied* admissions are those which result from some act or failure to act of the party. Part payment of a debt is an admission of liability to pay debt. Hart v. Deshong, Del., 1 Terry 218, 8 A.2d 85, 87. Defendants' failure to specifically deny their signatures to notes, "admission" that they signed the acknowledgments. Haas v. Johnson, 203 La. 697, 14 So.2d 606, 608. Undenied accusations were implied "admission". State v. Postal, 215 Minn. 427, 10 N.W.2d 373, 378.

*Incidental* admissions are those made in some other connection, or involved in the admission of some other fact.

*Judicial* admissions are those made in court by a person's attorney for the purpose of being used as a substitute for the regular legal evidence of the facts at the trial. Martin v. State, 46 Okl.Cr. 411, 287 P. 424. Such as are made voluntarily by a party, which appear of record in the proceedings of the court. Formal acts done by a party or his attorney in court on the trial of a cause for the purpose of dispensing with proof by the opposing party of some fact claimed by the latter to be true. Wiley v. Rutland R. Co., 86 Vt. 504, 86 A. 808, 810. Concession by defendant that she had executed a bill of sale for the automobile to intervener to secure an indebtedness was an "admission in judicio" by defendant against her title to the automobile. McDay v. Long, 63 Ga.App. 421, 11 S.E.2d 395, 399. But opening statements of counsel are not, technically, "admissions." Wilkey v. State ex rel. Smith, 238 Ala. 595, 192 So. 588, 591. See Acquiescence; Quasi-Admissions; True Admission.

Pleading

The acknowledgment or recognition by one party of the truth of some matter alleged by the opposite party, made in a pleading, the effect of which is to narrow the area of facts or allegations required to be proved by evidence. Connecticut Hospital v. Brookfield, 69 Conn. 1, 36 A. 1017.

An allegation not denied is deemed not controverted, and silence of pleader *is* usually treated as an admission against him for purpose of the action. Doughty v. Pallissard, 3 N.Y.S.2d 452, 453, 167 Misc. 55. Generally pleadings must be regarded as "judicial admissions", rather than ordinary "admissions". Hughes v. Fort Worth Nat. Bank, Tex.Civ.App., 164 S.W.2d 231, 232.

In *confession and avoidance,* admission of truth of opposite party's pleading is made.

Express admissions may be made of matters of fact only. See Confession and Avoidance.

*In Equity. Partial admissions* are those which are delivered in terms of uncertainty, mixed up with explanatory or qualifying circumstances.

*Plenary admissions* are those which admit the truth of the matter without qualification, whether it be asserted as from information and belief or as from actual knowledge. See Burrell v. Hackley, C.C.N.Y., 35 F. 833.

"Admissions against interest" are any statements made by or attributable to a party to an action, which constitute admissions against his interest and tend to establish or disprove any material fact in the case. Kellner v. Whaley, 148 Neb. 259, 27 N.W.2d 183, 189.

ADMIT. To allow, receive, or take; to suffer one to enter; to give possession; to license. Gregory v. United States, 17 Blatchf. 325, 10 Fed.Cas. 1195. Confess. Provident Life & Accident Ins. Co. v. Fodder, 99 Ind.App. 556, 193 N.E. 698, 700. Unequivocal acknowledgment of guilt. Ex parte Tozier, D.C.Me., 2 F.2d 268, 269. See Admission; Admissions.

ADMITTANCE. In English law, the act of giving possession of a copyhold estate. It is of three kinds: (1) Upon a voluntary grant by the lord, where the land has escheated or reverted to him. (2) Upon surrender by the former tenant. (3) Upon descent, where the heir is tenant on his ancestor's death. 2 Bla.Comm. 366.

ADMITTENDO CLERICO. An old English writ issuing to the bishop to establish the right of the Crown to make a presentation to a benefice. A writ of execution upon a right of presentation to a benefice being recovered in *quare impedit,* addressed to the bishop or his metropolitan, requiring him to admit and institute the clerk or presentee of the plaintiff. Reg.Orig. 33a.

ADMITTENDO IN SOCIUM. A writ for associating certain persons, as knights and other gentlemen of the county, to justices of assize on the circuit. Reg.Orig. 206.

ADMIXTURE. A substance formed by mixing; state of being mixed; act of mixing.

ADMONISH. To caution or advise. People v. Pennington, 267 Ill. 45, 10[7] N.E. 871, 872. To counsel against wrong practices, or to warn against danger of an offense. Ft. Smith Light & Traction Co. v. Hendrickson, 126 Ark. 377, 189 S. W. 1064, 1067.

ADMONITION. A reprimand from a judge to a person accused, on being discharged, warning him of the consequences of his conduct, and intimating to him that, should he be guilty of the same fault for which he has been admonished, he will be punished with greater severity. Merlin, *Repert.* The admonition was authorized as a species of punishment for slight misdemeanors. In ecclesiastical law, this is the lightest form of punishment.

Any authoritative oral communication or statement by way of advice or caution by the court to the jury respecting their duty or conduct as jurors; the admissibility or nonadmissibility of evidence, or the purpose for which any evidence admitted may be considered by them. Miller v. Noell, 193 Ky. 659, 237 S.W. 373, 374.

ADMONITIO TRINA. The threefold warning given to a 'prisoner who stood mute, before he was subjected to *peine forte et dure (q. v.).* 4 Bl.Comm. 325; 4 Steph.Comm. 391.

ADMORTIZATION. The reduction of property of lands or tenements to mortmain, in the feudal customs.

ADM'R. Ths abbreviation will be judicially presumed to mean "administrator." Moseley v. Mastin, 37 Ala. 216, 221.

ADNEPOS. The son of a great-great-grandson. Calvinus, Lex.

ADNEPTIS. The daughter of a great-great-granddaughter. Calvinus, Lex.

ADNICHILED. Annulled, canceled, made void. 28 Hen. VIII.

ADNLHILARE. In old English law, to annul; to make void; to reduce to nothing; to treat as nothing; to hold as or for nought.

ADNOTATIO. In the civil law, the subscription of a name or signature to an instrument. Cod. 4, 19, 5, 7.

A rescript *(q. v.)* of the prince or emperor, signed with his own hand, or sign-manual. Cod. 1, 19, 1. "In the imperial law, casual homicide was excused by the indulgence of the emperor, signed with his own .sign-manual, *annotatione principis."* 4 Bl.Comm. 187.

ADOBE. Earth. In arid or desert regions, an alluvial or playa clay from which bricks are made for construction of houses, called "adobe" houses. See Sweeney v. Jackson County, 93 Or. 96, 178 P. 365, 376.

ADOLESCENCE. That age which follows puberty and precedes the age of majority. It commences for males at fourteen, and for females at twelve years, and continues until twenty-one years complete.

ADOPT. To accept, appropriate, choose, or select; to make that one's own (property or act) which was not so originally.

To adopt a route for the transportation of the mail means to take the steps necessary to cause the mail to be transported over that route. Rhodes v. U. S., Dev.Ct.C1. 47. To adopt a contract is to accept it as binding, notwithstanding some defect which entitles the party to repudiate it. Thus, when a person affirms a voidable contract, or ratifies a contract made by his agent beyond his authority, he is sometimes said to adopt it. Sweet. Strictly, however, the word "adopt" should be used to apply to void transactions, while the word "ratify" should be limited to the final approval of a voidable transaction by one who theretofore had the optional right to relieve himself from its obligations. United German Silver Co. v. Bronson, 92 Conn. 266, 102 A. 647, 648. "Adoption" of a contract by one not a party thereto is of the nature of a novation. Edwards v. Heralds of Liberty, 263 Pa. 548, 107 A. 324, 326. See Affirm.

To accept, consent to, and put into effective operation; as in the case of a constitution, constitutional amendment, ordinance, or by-law. Real v. People, 42 N.Y. 282; People v. Norton, 59 Barb. (N.Y.) 191. A Code. City of Albany v. Nix, 21 Ala.App. 164, 106 So. 199, 200. Statements in an application appearing above insured's signature. Republic Mut. Ins. Co. v. Wilson, 66 Ohio App.. 522, 35 N.E.2d 467, 468.

To take into one's family the child of another and give him or her the rights, privileges, and duties of a child and heir. State v. Thompson, 13 La.Ann. 515; Abney v. De Loach, 84 Ala. 393.

Adoption of children was a thing unknown to the common law, but was a familiar practice under the Roman law and in those countries where the civil law prevails, as France and Spain. Butterfield v. Sawyer, 187 Ill. 598, 58 N.E. 602, 52 L.R.A. 75, 79 Am.St.Rep. 246. Creature of the law, and statutory requirements must be strictly carried out. Owles v. Jackson, 199 La. 940, 7 So.2d 192, 194.

To accept an alien as a citizen or member of a community or state and invest him with corresponding rights and privileges, either (in general and untechnical parlance) by naturalization, or by an act equivalent to naturalization, as where a white man is "adopted" by an Indian tribe. Hampton v. Mays, 4 Ind.T. 503, 69 S.W. 1115.

ADOPTION. The taking and receiving as one's own that to which he bore no prior relation, colorable or otherwise. Davies v. Lahann, C.C.A.N.M., 145 F.2d 656, 659. The act of one who takes another's child into his own family, treating him as his own, and giving him all the rights and duties of his own child. See In re Chambers' Estate, 183 N.Y.S. 526, 528, 112 Misc. 551. ₃in manner provided by and with consequences specified in statute. Fisher v. Robison, 329 Pa. 305, 198 A. 81, 82. A. juridicial act creating between two persons certain relations, purely civil, of paternity and filiation. 6 Demol. § 1; Grimes v. Grimes, 207 N.C. 778, 178 S.E. 573. The relation thereby created is a statutory status, not a contractual relation. Caruso v. Caruso, 13 N.Y.S.2d 239, 241, 175 Misc. 290. Though legal adoption may confer on person adopted rights of actual relationship of child, simple "adoption" extends only to his treatment as member of the household. Shepherd v. Sovereign Camp, W.O.W., 166 Va. 488, 186 S.E. 113, 116. See, also, Adopt.

Adoption, properly speaking, refers only to persons who are strangers in blood, In re Lund's Estate, Cal.App., 148 P.2d 709, 711. And is not synonymous with "legitimation," which refers to persons of the same blood. Blythe v. Ayres, 96 Cal. 532, 31 P. 915, 19 L.R.A. 40. But this distinction is not always observed. In re Presly's Estate, 113 Okl. 160, 240 P. 89, 90. It is a relationship artificially created by statute. Borner v. Larson, 70 N. D. 313, 293 N.W. 836, 839.

ADOPTION BY PUBLIC ACKNOWLEDGMENT. See Legitimate.

ADOPTIVE ACT. An act of legislation which comes into operation within a limited area upon being adopted, in manner prescribed therein, by the inhabitants of that area.

ADOPTIVUS. Lat. Adoptive. Applied both to the parent adopting, and the child adopted. Inst. 2, 13, 4; Inst. 3, 1, 10-14.

ADPROMISSOR. In the civil and Scotch law, a guarantor, surety, or cautioner; a peculiar species of *fidejussor;* one who adds his own promise to the promise given by the-principal debtor, whence the name.

ADQUIETO. Payment. Blount.

ADRECTARE. To set right, satisfy, or make amends.

ADRHAMIRE. In old European law, to undertake, declare, or promise solemnly; to pledge; to pledge one's self to make oath. Spelman.

ADRIFT. Sea-weed, between high and low watermark, which has not been deposited on the shore, and which during flood-tide is moved by each rising and receding wave, is *adrift,* although the

bottom of the mass may touch the beach. Anthony v. Gifford, 2 Allen (Mass.) 549.

ADROGATION. In the civil law, the adoption of one who was *impubes;* that is, if a male, under fourteen years of age; if a female, under twelve. Dig. 1, 7, 17, 1.

ADS. An abbreviation for *ad sectam (q. v.),* meaning "at the suit of." Bowen v. Sewing Mach. Co., 86 Ill. 11.

ADSCENDENTES. Lat. In the civil law, ascendants. Dig. 23, 2, 68; Cod. 5, 5, 6.

ADSCRIPTI. See Adscriptus.

ADSCRIPTI GLEBIE. Slaves who served the master of the soil, who were annexed to the land, and passed with it when it was conveyed. Calvinus, Lex.

In Scotland, as late as the reign of George III., laborers in collieries and salt works were bound to the coal-pit or salt work in which they were engaged, in a manner similar to that of the *adscripti* of the Romans. Bell. These *servi adscripti* (or *adscriptitii) glebce* held the same position as the *villeins regardant* of the Normans; 2 Bla.Com. 93. See 1 Poll. & Mait. 372.

ADSCRIPTITII. Lat. A species of serfs or slaves. See 1 Poll. & Mait. 372.

Those persons who were enrolled and liable to be drafted as legionary soldiers. Calvinus, Lex.

ADSCRIPTUS. In the civil law, added, annexed, or bound by or in writing; enrolled, registered; united, joined, annexed, bound to, generally. *Servus colonce adscriptus,* a slave annexed to an estate as a cultivator. Dig. 19, 2, 54, 2. *Fundus adscriptus,* an estate bound to, or burdened with a duty. Cod. 11, 2, 3.

ADSESSORES. Side judges. Assistants or advisers of the regular magistrates, or appointed as their substitutes in certain cases. Calvinus, Lex. See Assessor.

ADSTIPULATOR. In Roman law, an accessory party to a promise, who received the same promise as his principal did, and could equally receive and exact payment; or he only stipulated for a part of that for which the principal stipulated, and then his rights were coextensive with the amount of his own stipulation. One who supplied the place of a procurator at a time when the law refused to allow stipulations to be made by procuration. Sandars, Just.Inst. (5th Ed.) 348.

ADULT.

Civil Law

A male infant who has attained the age of fourteen; a female infant who has attained the age of twelve. Dom.Liv.Prel. tit. 2, § 2, n. 8.

Common Law

One who has attained the legal age of majority, generally 21 years, though in some states women are legally "adults" at 18. Schenault v. State, 10 Tex.App. 410; Lucas v. United States Fidelity & Guaranty Co., 174 A. 712, 713, 113 N.J.Law, 491.

ADULTER. Lat. One who corrupts; one who seduces another man's wife. *Adulter solidorum.* A corruptor of metals; a counterfeiter. Calvinus, Lex.

ADULTERA. In the civil law, an adulteress; a woman guilty of adultery. Dig. 48, 5, 4, pr.; Dig. 48, 5, 15, 8.

ADULTERATION. The act of corrupting or debasing; the act of mixing something impure or spurious with something pure or genuine, or an inferior article with a superior one of the same kind. State v. Norton, 24 N.C. 40. The term is generally applied to the act of mixing up with food or drink intended to be sold other matters of an inferior quality, and usually of a more or less deleterious quality. Grosvenor v. Duffy, 121 Mich. 220, 80 N.W. 19, though the artificially colored poppy seeds were not deleterious and had the same food value as the naturally colored seeds. U. S. v. Two Bags, Each Containing 110 Pounds, Poppy Seeds, C.C.A.Ohio, 147 F.2d 123, 127.

ADULTERATOR, Lat. A corrupter. In the civil law. A forger; a counterfeiter. *Adulteratores monetce,* counterfeiters of money. Dig. 48, 19, 16, 9.

ADULTERINE. Begotten in an adulterous intercouite. Those are not deemed adulterine who are begotten,of a woman openly married through ignorance of a former wife being alive. In the Roman and canon law, adulterine bastards were distinguished from such as were the issue of two unmarried persons, and the former were treated with more severity, not being allowed the *status* of natural children, and being ineligible to holy orders.

ADULTERINE BASTARDS. The offspring of adulterous relations. Kotzke v. Kotzke's Estate, 205 Mich. 184, 171 N.W. 442, 443. See, also, Adulterous Bastards.

ADULTERINE GUILDS. Traders acting as a corporation without a charter, and paying a fine annually for permission to exercise their usurped privileges. Smith, Wealth Nat. b. 1, c. 10.

ADULTERIUM. A fine anciently imposed for the commission of adultery.

ADULTEROUS BASTARDS. Those produced by an unlawful connection between two persons, who at the time when the child was conceived, were, either of them or both, connected by marriage with some other person. Civil Code La. art. 182.

ADULTERY. Voluntary sexual intercourse of a married person with a person other than the offender's husband or wife. Franzetti v. Franzetti, Tex.Civ.App., 120 S.W.2d 123, 127.

In some states, however, as was also true under the Roman and Jewish law, this crime is committed only when the *woman* is married to a third person ; the unlawful commerce of a married man with an unmarried woman not being of the grade of adultery. Corn. v. Call, 21 Pick. Mass. 509, 32 Am.Dec. 284, and note; Com. v. Elwell, 2 Metc. 190, 39 Am.Dec. 398. In other jurisdictions, both parties are guilty of adultery, even though only one of

them is married. Goodwin v. State, 70 Tex.Cr.R. 600, 158 S.W. 274, 275. In some jurisdictions, also, a distinction is made between double and single adultery, the former being committed where both parties are married to other persons, the latter where one only is so married. Hunter v. U. S., 1 Pin.Wis. 91, 39 Am. Dec. 277.

### Open and Notorious Adultery

To constitute living in open and notorious adultery, the parties must reside together publicly in the face of society, as if conjugal relations existed between them, and their so living and the fact that they are not husband and wife must be known in the community. McCullough v. State, 107 Tex.Cr.R. 258, 296 S.W. 530.

ADVANCE, v. To pay money or render other value before it is due; to furnish something before an equivalent is received; to loan; to furnish capital in aid of a projected enterprise, in expectation of return from it. Powell v. Allan, 70 Cal. App. 663, 234 P. 339, 344. To supply beforehand; to furnish on credit or before goods are delivered or work done; to furnish as a part of a stock or fund; to pay money before it is due; to furnish money for a specific purpose understood between the parties, the money or sum equivalent to be returned; furnishing money or goods for others in expectation of reimbursement; money or commodities furnished on credit; a loan, or gift or money advanced to be repaid conditionally; may be equivalent to "pay." In re Altman's Will, Sur., 6 N.Y.S.2d 972, 975.

An agreement to "advance" money for personal property implies a loan with property as pledge, rather than a payment of purchase money in sale. Shelley v. Byers, 73 Cal. App. 44, 238 P. 177, 182.

ADVANCE PAYMENT. Payments made in anticipation of a contingent or fixed future liability. Smith v. Unity Industrial Life Ins. Co., La.App., 13 So.2d 129, 132.

ADVANCEMENT. Money or property given by a parent to his child or, sometimes, presumptive heir, or expended by the former for the latter's benefit, by way of anticipation of the share which the child will inherit in the parent's estate and intended to be deducted therefrom. It is the latter circumstance which differentiates an advancement from a gift or a loan. Brewer's Adm'r v. Brewer, 181 Ky. 400, 205 S.W. 393, 396; In re Allen's Estate, 207 Pa. 325, 56 A. 928.

A perfect and irrevocable gift, In re Wiese's Estate, 222 Iowa 935, 270 N.W. 380, 382. Passing title in lifetime of donor, Burkhart v. Lowery, 115 Ind.App. 445, 59 N.E.2d 732, 734; but which must be accounted for by donee on distribution of donor's estate. In re Beier's Estate, 205 Minn. 43, 284 N.W. 833, 835, 836, 837, 838. "Advancement," unlike "ademption" (q. v.), applies only to cases of intestacy. Ellard v. Ferris, 91 Ohio St. 339, 110 N.E. 476, 479. An "advancement by portion," within the meaning of the statute, is a sum given by a parent to establish a child in life, (as by starting him in business,) or to make a provision for the child, (as on the marriage of a daughter). L. R. 20 Eq. 155. See Ademption; Gift.

ADVANCES. Moneys paid before or in advance of the proper time of payment; money or commodities furnished on credit; a loan or gift, or money advanced to be repaid conditionally. Powder Co. v. Burkhardt, 97 U.S. 110, 24 L.Ed. 973.

This word, when taken in its strict legal sense, does not mean gifts, (advancements,) and does mean a sort of loan; and, when taken in its ordinary and usual sense, it includes both loans and gifts,—loans more readily, perhaps, than gifts. Landrum & Co. v. Wright, 11 Ala.App. 406, 66 So. 892.

Payments advanced to the owner of property by a factor or broker on the price of goods which the latter has in his hands, or is to receive, for sale.

"Loans" are repayable at maturity, while "advances" are not repaid by party receiving them, but are covered by proceeds of consigned goods. People ex rel. James Talbott, Inc., v. Goldfogle, 211 N.Y.S. 122, 123, 213 App.Div. 719.

ADVANTAGE. Any state, condition, circumstance, opportunity, or means specially favorable to success, prosperity, interest, reputation, or any desired end. Duvall v. State, 92 Ind.App. 134, 166 N.E. 603, 604. Preference or priority. United States v. Preston, 4 Wash. 446, Fed.Cas.No.16,087.

ADVANTAGIUM. In old pleading, an advantage. Co.Ent. 484; Townsh.P1. 50.

ADVENA. In Roman law, one of foreign birth, who has left his own country and settled elsewhere, and who has not acquired citizenship in his new locality; often called *albanus.* Du Cange.

ADVENT. A period of time recognized by the English common and ecclesiastical law, beginning on the Sunday that falls either upon St. Andrew's day, being the 30th of November, or the next to it, and continuing to Christmas day. Wharton.

ADVENTITIOUS. That which comes incidentally, fortuitously, or out of the regular course. "Adventitious value" of lands, see Central R. Co. v. State Board of Assessors, 49 N.J.Law, 1, 7 A. 306.

ADVENTITIUS. Lat. Fortuitous; incidental; coming from an unusual source. *Adventitia bona* are goods which fall to a man otherwise than by inheritance. *Adventitia dos* is a dowry or portion given by some friend other than the parent.

ADVENTURA. An adventure. 2 Mon.Angl. 615; Townsh.Pl. 50. Flotson, jetson, and lagon are styled *adventurce maris,* (adventures of the sea.) Hale, De Jure Mar. pt. 1, c. 7.

ADVENTURE. A hazardous and striking enterprise, a bold undertaking in which hazards are to be met and issue hangs upon unforeseen events. Bond v. O'Donnell, 205 Iowa, 902, 218 N.W. 898, 902, 63 A.L.R. 901.

### Generally

*Adventure, bill of.* In mercantile law, a writing signed by a merchant, stating that the property in goods shipped in his name belongs to another, to the adventure or chance of which the person so named is to stand, with a covenant from the merchant to account to him for the produce.

*Gross adventure.* In maritime law, a loan on bottomry. So named because the lender, in case

of a loss, or expense incurred for the common safety, must contribute to the *gross* or general average.

*Joint adventure.* A commercial or maritime enterprise undertaken by 'several persons jointly; a limited partnership,—not limited in the statutory sense as to the liability of the partners, but as to its scope and duration. Lobsitz v. E. Lissberger Co., 168 App.Div. 840, 154 N.Y.S. 556, 557. A special partnership. McDaniel v. State Fair of Texas, Tex.Civ.App., 286 S.W. 513, 517. An association of two or more persons to carry out a single business enterprise for profit, for which purpose they combine their property, money, effects, skill, and knowledge. Forman v. Lumm, 214 App.Div. 579, 212 N.Y.S. 487. A special combination of two or more persons, where, in some specific adventure, a profit is jointly sought, without any actual partnership or corporate designation. Griffin v. Reilly, Tex.Civ.App., 275 S.W. 242, 246.

It is ordinarily, but not necessarily, limited to a single transaction, Forbes v. Butler, 66 Utah, 373, 242 P. 950, 956, which serves to distinguish it from a partnership, Barry v. Kern, 184 Wis. 266, 199 N.W. 77, 78. But the business of conducting it to a successful termination may continue for a number of years. Elliott v. Murphy Timber Co., 117 Or. 387, 244 P. 91, 93, 48 A.L.R. 1043. There is no real distinction between a "joint adventure" and what is termed a "partnership for a single transaction." Atlas Realty Co. v. Galt, 153 Md. 586, 139 A. 285, 286. A "joint adventure," while not identical with a partnership, is so similar in its nature and in the relations created thereby that the rights of the parties as between themselves are governed practically by the same rules that govern partnerships. Goss v. Lanin, 170 Iowa 57, 152 N.W. 43, 45.

Marine Insurance

A very usual word in policies of marine insurance, and everywhere used as synonymous, or nearly so, with "perils." It is often used by the writers to describe the enterprise or voyage as a "marine adventure" insured against. Moores v. Louisville Underwriters, C.C.Tenn., 14 Fed. 233.

Mercantile Law

Sending goods abroad under charge of a supercargo or other agent, at the risk of the sender, to be disposed of to the best advantage for the benefit of the owners.

The goods themselves so sent.

ADVENTURER. One who undertakes uncertain or hazardous actions or enterprises. It is also used to denote one who seeks to advance his own interests by unscrupulous designs on the credulity of others. It has been held that to impute that a person is an adventurer is a libel; 18 L.J.C.P. 241.

ADVERSARIA. (From Lat. *adversa,* things remarked or ready at hand.) Rough memoranda, common-place books.

ADVERSARY. A litigant-opponent, the opposite party in a writ or action.

ADVERSARY PROCEEDING. One having opposing parties; contested, as distinguished from an *ex parte* application; one of which the party seeking relief has given legal warning to the other party, and afforded the latter an opportunity to contest it. Excludes an adoption proceeding. Platt v. Magagnini, 187 P. 716, 718, 110 Wash. 39.

ADVERSE. Opposed; contrary; in resistance or opposition to a claim, application, or proceeding. Having opposing interests; having interests for the preservation of which opposition is essential. In re National Lock Co., D.C.Ill., 9 F.Slipp. 432, 433.

As to adverse "Claim," "Enjoyment," "User," "Verdict," "Witness," see those titles.

ADVERSE INTEREST. The "adverse interest" of a witness, so as to permit cross-examination by the party calling him, must be so involved in the event of the suit that a legal right or liability will be acquired, lost, or materially affected by the judgment, and must be such as would be promoted by the success of the adversary of the party calling him. Dinger v. Friedman, 279 Pa. 8, 123 A. 641, 643. On petition in bankruptcy court for removal of trustee's attorney, attorney has an interest adverse to trustee. In re Mallow Hotel Corporation, D.C.Pa., 18 F.Supp. 15, 17.

ADVERSE PARTY. An "adverse party" entitled to notice of appeal is every party whose interest in relation to the judgment or decree appealed from is in conflict with the modification or reversal sought by the appeal.

Every party interested in sustaining the judgment or decree. Harrigan v. Gilchrist, 121 Wis. 127, 99 N.W. 909. All parties appearing against losing party unless reversal of case will not be to party's detriment. Shea v. Shea, Iowa, 264 N.W. 590. Any party who would be prejudicially affected by a modification or reversal of the judgment appealed from. Great Falls Nat. Bank v. Young, 67 Mont. 328, 215 P. 651, 652. One who has interest in opposing object sought to be accomplished by appeal. In re Baxter's Estate, 94 Mont. 257, 22 P.2d 182. Party to record, whose interest in subject-matter of appeal is adverse to, reversal or modification of judgment or order appealed from. MacDonald v. Superior Court in and for City and County of San Francisco, 101 Cal.App. 423, 281 P. 672, 673. A party who, by the pleadings, is arrayed on the opposite side. Merrill v. St. Paul City Ry. Co., 170 Minn. 332, 212 N.W. 533. The other party to the action. Highland v. Hines, 80 N.H. 179, 116 A. 347, 349. A party to the record for, or against, whom judgment is sought. Merchants' Supply Co. v. Hughes' Ex'rs, 139 Va. 212, 123 S.E. 355, 356. "Opposite" party synonymous. In re Wah-shah-she-metsa-he's Estate, 111 Okl. 177, 239 P. 177, 178. And term is not necessarily confined to plaintiffs as against defendants, or vice versa. Arwood v. Hill's Adm'rs, 135 Va. 235, 117 S.E. 603, 605. But a defaulting defendant is not an "adverse party" ; Holt v. Empey, 32 Idaho, 106, 178 P. 703; nor is one who is named as a party but is not served; Kissler v. Moss, 26 Idaho, 516, 144 P. 647. Compare Fergen v. Lonie, 50 S.D. 328, 210 N.W. 102, 103 (garnishment debtor not served in garnishment proceeding).

ADVERSE POSSESSION. A method of acquisition of title by possession for a statutory period under certain conditions. Lowery v. Garfield County, Mont., 208 P.2d 478, 486. It has been described as the statutory method of acquiring title to land by limitation. Field v. Sosby, Tex.Civ. App., 226 S.W.2d 484, 486.

The possession must be actual, Ortiz v. Pacific States Properties, Cal.App., 215 P.2d 514, 516;

adverse, Flanery v. Greene, 158 S.W.2d 413, 415, 289 Ky. 244; under claim of right, Thomas v. Durchslag, Ill., 90 N.E.2d 200, 204, 404 Ill. 581; continuous, Davis v. Federal Land Bank of Columbia, 13 S.E.2d 417, 419, 219 N.Car. 248; open Wilberforce University v. College of Ed. and Indus. Arts at Wilberforce University, 90 N.E.2d 172, 173, 86 Ohio App. 121; notorious, Edie v. Coleman, 141 S.W.2d 238, 242, 243, 235 Mo.App. 1289; exclusive, Laudati v. State, 30 N.Y.S.2d 267, 270, and hostile, Singley v. Dempsey, 42 So.2d 609, 612, 252 Ala. 677. Although color of title is not essential, Roesch v. Gerst, 138 P.2d 846, 851, 852, 18 Wash.2d 294, it is of great evidentiary value in establishing adverse possession, Lincoln v. Mills, 2 So.2d 809, 811, 191 Miss. 512.

Adverse possession depends on intent of occupant to claim and hold real property in opposition to all the world, Sertic v. Roberts, 136 P.2d 248, 171 Ore. 121; and also embodies the idea that owner of or persons interested in property have knowledge of the assertion of ownership by the occupant, Field v. Sosby, Tex.Civ.App., 226 S.W.2d 484, 486.

Payment of taxes alone is not sufficient in itself to establish adverse possession, Blitch v. Sapp, 194 So. 328, 330, 142 Fla. 166. It is mandatory that the element of continuous possession exist for the full statutory period, Wells v. Tietge, 9 N.W.2d 180, 182, 143 Neb. 230.

ADVERSUS. In the civil law, against, *(contra.) Adversus bonos mores,* against good morals. Dig. 47, 10, 15.

Adversus extraneos vitiosa possessio prodesse solet. Prior possession is a good title of ownership against all who cannot show a better. D. 41. 2. 53; Salmond, Jurispr. 638.

ADVERTISE. To give notice to, inform or notify, give public notice of, announce publicly, notice or observe. People v. Hopkins, 263 N.Y.S. 290, 147 Misc. 12. To advise, announce, apprise, command, give notice of, inform, make known, publish. People v. Montague, 274 N.W. 347, 351, 280 Mich. 610. On call to the public attention by any means whatsoever; Commonwealth v. Allison, 227 Mass. 57, 116 N.E. 265, 266.

It includes publication by hand bills, signs, bill boards, sound trucks and radio, Rust v. Missouri Dental Board, 348 Mo. 616, 155 S.W.2d 80, 83; or in a newspaper, or by means of placards, or other written public notices ; Nichols v. Nichols, 192 Ala. 206, 68 So. 186, 187. It is merely identification and description, apprising of quality and place, Rast v. Van Deman & Lewis Co., 240 U.S. 342, 36 S.Ct. 370, 377, 60 L.Ed. 679. And "advertising purposes" are not limited to matters of vocation, or even avocation, but include advertisements essentially for unselfish purposes, Almind v. Sea Beach Ry. Co., 141 N.Y.S. 842, 843, 157 App.Div. 230.

ADVERTISEMENT. Notice given in a manner designed to attract public attention. Edwards v. Lubbock County, Tex., 33 S.W.2d 482, 484. Information communicated to the public, or to an individual concerned, as by handbills or the newspaper. First Nat. Corporation v. Perrine, 99 Mont. 454, 43 P.2d 1073, 1077.

A sign-board, erected at a person's place of business, giving notice that lottery tickets are for sale, Com. v. Hooper, 5 Pick.Mass. 42.

ADVERTISEMENTS OF QUEEN ELIZABETH. Certain articles or ordinances drawn up by Archbishop Parker and some of the bishops in 1564, at the request of Queen Elizabeth, the object of which was to enforce decency and uniformity in the ritual of the church. The queen subsequently refused to give her official sanction to these advertisements, and left them to be enforced by the bishops under their general powers. Phillim.Ecc. Law, 910; 2 Prob.Div. 276; 354.

ADVICE. View; opinion; the counsel given by lawyers to their clients; an opinion expressed as to wisdom of future conduct. Hughes v. Van Bruggen, 44 N.M. 534, 105 P.2d 494, 496.

The word has several different meanings, among others, as follows : Information or notice given; intelligence ;—usually information communicated by letter ;—Chiefly as to drafts or bills of exchange ; as, a letter of advice.—Advice implies real or pretended knowledge, often professional or technical, on the part of the one who gives it. Provident Trust Co. v. National Surety Co., D.C.Pa., 44 F.Supp. 514, 515.

The instruction usually given by one merchant or banker to another by letter, informing him of shipments made to him, or of bills or „drafts drawn on him, with particulars of date, or sight, the sum, and the payee. Bills presented for acceptance or payment are frequently dishonored for *want of advice.*

*Letter of advice* is a communication from one person to another, advising or warning the latter of something which he ought to know, and commonly apprising him beforehand of some act done by the writer which will ultimately affect the recipient. Chit. Bills, 162.

ADVISARE, ADVISARI. Lat. To consult, deliberate, consider, advise; to be advised. Occurring in the phrase *curia advisari 4vult,* which see (usually abbreviated *cur. adv.* vu/t, or C. *A. V.,)* the court wishes to be advised, or to consider of the matter.

ADVISE. To give an opinion or counsel, or recommend a plan or course of action; also to give notice. Long v. State, 23 Neb. 33, 36 N.W. 310. To encourage. Voris v. People, 75 Colo. 574, 227 P. 551, 553. "Inform" or "acquaint." Ericson v. Steiner, 119 Cal.App. 305, 6 P.2d 298, 300.

It is different in meaning from "instruct" or "persuade." Hughes v. Van Bruggen, 44 N.M. 534, 105 P.2d 494, 497. Where a statute authorizes the trial court to *advise* the jury to acquit, the court has no power to *instruct* the jury to acquit. The court can only counsel, and the jury are not bound by the advice. People v. Horn, 70 Cal. 17, 11 P. 470. "Advise" imports that it is discretionary or optional with the person addressed whether he will act on such advice or not. State v. Downing, 23 Idaho, 540, 130 P. 461, 462.

ADVISED. Prepared to give judgment, after examination and deliberation. "The court took time to be advised." 1 Leon. 187.

ADVISEDLY. With deliberation; intentionally. 15 Moore P.C. 147.

ADVISEMENT. Consideration; deliberation; consultation. Drainage Dist. No. 1 of Lincoln

County v. Suburban Irr. Dist., 139 Neb. 460, 298 N.W. 131, 134. The consultation of a court, after the argument of a cause by counsel, and before delivering their opinion. In re Hohorst, 150 U.S. 662, 14 S.Ct. 221, 37 L.Ed. 1211.

ADVISORY. Counselling, suggesting, or advising, but not imperative or conclusive. A verdict on an issue out of chancery is advisory. Watt v. Starke, 101 U.S. 252, 25 L.Ed. 826. Not binding on chancellor. Merritt v. Palmer, 289 Ky. 141, 158 S.W.2d 163, 165.

ADVISORY OPINION. A formal opinion by judge or judges or a court or a law officer upon a question of law submitted by a legislative body or a governmental official, but not actually presented in a concrete case at law. Douglas Oil Co. v. State, Tex.Civ.App., 81 S.W.2d 1064, 1077.

Merely opinion of judges or court, which adjudicates nothing and is binding on no one, in exercise of wholly non or extra-judicial function. The expression ordinarily connotes the practice which existed in England from very early times of extra-judicial consultation of the judges by the Crown and the House of Lords. Douglas Oil Co. v. State, Tex.Civ.App., 81 S.W.2d 1064, 1077.

ADVOCACY. The act of pleading for, supporting, or recommending active espousal. Gitlow v. People of State of New York, 45 S.Ct. 625, 626, 268 U.S. 652, 69 L.Ed. 1138.

ADVOCARE. Lat. To defend; to call to one's aid; to vouch; to warrant.

ADVOCASSIE. L. Fr. The office of an advocate; advocacy. Kelham.

ADVOCATA. In old English law, a patroness; a woman who had the right of presenting to a church. Spelman.

ADVOCATE, v. To speak in favor of; defend by argument. Ex parte Bernat, D.C.Wash., 255 F. 429, 432. To support, vindicate, or recommend publicly. Butash v. State, 212 Ind. 492, 9 N.E.2d 88, 90. Not for an educational purpose, but to disseminate controversial "propaganda," which means plan for publication of doctrine or system of principles. Leubuscher v. Commissioner of Internal Revenue, C.C.A., 54 f[1].2d 998, 999.

ADVOCATE, n. One who assists, defends, or pleads for another; one who renders legal advice and aid and pleads the cause of another before a court or a tribunal, a counselor. Haverty Furniture Co. v. Foust, 174 Tenn. 203, 124 S.W.2d 694, 697.

A person learned in the law, and duly admitted to practice, who assists his client with advice, and pleads for him in open court. Holthouse.

An assistant; adviser; a pleader of causes.

Derived from *advocare,* to summon to one's assistance; *advocatus* originally signified an assistant or helper of any kind, even an accomplice in the commission of a crime; Cicero, *Pro Ccecina,* c. 8; Livy, lib. ii. 55; 47; Tertullian, *De Idolatr.* cap. xxiii. ; Petron. ' *Satyric.* cap. xv. Secondarily, it was applied to one called in to assist a party in the conduct of a suit; Inst. 1, 11, D, 50, 13. *de extr. cogn.* Hence, a pleader, which *is its* present signification.

Civil and Ecclesiastical Law

An officer of the court, learned in the law, who is engaged by a suitor to maintain or defend his cause.

Generally

—Advocate general. The adviser of the crown in England on questions of naval and military law.

—Lord Advocate. The principal crown lawyer in Scotland, and one of the great officers of state of Scotland. It is his duty to act as public prosecutor; but private individuals injured may prosecute upon obtaining his concurrence. He is assisted by a solicitor general and four junior counsel, termed "advocates-depute." He has the power of appearing as public prosecutor in any court in Scotland, where any person can be tried for an offense, or in any action where the crown is interested. Wharton.

—Queen's advocate. A member of the College of Advocates, appointed by letters patent, whose office is to advise and act as counsel for the crown in questions of civil, canon, and international law. His rank is next after the solicitor general.

ADVOCATI. Lat. In Roman law, patrons; pleaders; speakers.

ADVOCATI ECCLESIZE. Advocates of the church.

A term used in the ecclesiastical law to denote the patrons of churches who presented to the living on an avoidance. This term was also applied to those who were retained to argue the cases of the church. These were of two sorts : those retained as pleaders to argue the cases of the church and attend to its law-matters ; and advocates, or patrons of the advowson. Cowell ; Spelman, Gloss.

ADVOCATI FISCI. In civil law, those chosen by the emperor to argue his cause whenever a question arose affecting his revenues. 3 Bla. Comm. 27. Advocates of the fisc, or revenue; fiscal advocates, *(qui causam fisci egissent.)* Cod. 2, 9, 1; Cod. 2, 7, 13. Answering, in some measure, to the king's counsel in English law.

ADVOCATIA. In the civil law, the quality, function, privilege, or territorial jurisdiction of an advocate.

The functions, duty, or privilege of an advocate. Du Cange, *Advocatia.*

ADVOCATION. In Scotch law, a process by which an action may be carried from an inferior to a superior court before final judgment in the former.

ADVOCATIONE DECIMARUM. A writ which lay for tithes, demanding the fourth part or upwards, that belonged to any church.

ADVOCATOR. In old practice, one who called on or vouched another to warrant a title; a voucher. *Advocatus;* the person called on, or vouched; a vouchee. Spelman; Townsh.P1. 45.

In Scotch practice, an appellant. 1 Broun, R. 67.

ADVOCATUS. A pleader; a narrator. Bracton, 412 a, 372 *b.*

In the civil law, an advocate; one who managed or assisted in managing another's cause before a judicial tribunal. Called also *"patronus."* Cod. 2, 7, 14. But distinguished from *causidicus.* Id. 2, 6, 6.

ADVOCATUS DIABOLI. In ecclesiastical law, the devil's advocate; the advocate who argues against the canonization of a saint.

Advocatus est, ad quern pertinet jus advocationis alicujus ecclesim, ut ad ecclesiam, nomine proprio, non alieno, possit proesentare. A patron is he to whom appertains the right of presentation to a church, in such a manner that he may present to such a church in his own name, and not in the name of another. Co.Litt. 119.

ADVOUTRER. In old English law, an adulterer. Beaty v. Richardson, 56 S.C. 173, 34 S.E. 73, 46 L.R.A. 517.

ADVOUTRY. In old English law, adultery between parties both of whom were married. Hunter v. U. S., 1 Pin. (Wis.) 91, 39 Am.Dec. 277. Or the offense by an adulteress of continuing to live with the man with whom she committed the adultery. Cowell; Termes de la Ley. Sometimes spelled "advowtry." See Advoutrer.

ADVOWEE, or AVOWEE. The person or patron who has a right to present to a benefice. Fleta, lib. 5, c. 14.

ADVOWEE PARAMOUNT. The sovereign, or highest patron.

ADVOWSON. In English ecclesiastical law, the right of presentation to a church or ecclesiastical benefice; the right of presenting a fit person to the bishop, to be by him admitted and instituted to a certain benefice within the diocese, which has become vacant. 2 Bl.Comm. 21; Co.Litt. 119b, 120a. The person enjoying this right is called the "patron" *(patronus)* of the church, and was formerly termed *"advocatus,"* the advocate or defender, or in English, *"advowee."* Id.; 1 Crabb, Real Prop. p. 129, § 117.

When there is no patron, or he neglects to exercise his right within six months, it is called a *lapse,* and a title is given to the ordinary to collate to a church : when a presentation is made by one who has no right, it is called a *usurpation.*

Advowsons are of different kinds.

*Advowson appendant* is an advowson annexed to a manor, and passing with it, as incident or appendant to it, by a grant of the manor only, without adding any other words. 2 Bl.Comm. 22; Co.Litt. 120, 121; 1 Crabb, Real Prop. p. 130, § 118.

*Advowson collative.* Where the bishop happens himself to be the patron, in which case (presentation being impossible, or unnecessary) he does by one act, which is termed *"collation,"* or conferring the benefice, all that is usually done by the separate acts of presentation and institution. 2 Bl.Comm. 22, 23; 1 Crabb, Real Prop. p. 131, § 119.

Advowson *donative* exists where the patron has the right to put his clerk in possession by his mere gift, or deed of donation, without any presentation to the bishop, or institution by him. 2 Bl.Comm. 23; 1 Crabb, Real Prop. p. 131, § 119.

*Advowson* in *gross* is an advowson separated from the manor, and annexed to the person. 2 Bl.Comm. 22; Co. Litt. 120; 1 Crabb, Real Prop. p. 130, § 118; 3 Steph. Comm. 116.

*Advowson presentative* is the usual kind of advowson, where the patron has the right of *presentation* to the bishop, or ordinary, and moreover to demand of him to institute his clerk, if he finds him canonically qualified. 2 Bl.Comm. 22; 1 Crabb, Real Prop. p. 131, § 119.

ADVOWTRY. See Advoutry.

2EDES. Lat. In the civil law, a house, dwelling, temple, place of habitation, whether in the city or country. Dig. 30, 41, 5. In the country everything upon the surface of the soil passed under the term *"cedes."* Du Cange; Calvin.

IEDIFICARE. Lat. In civil and old English law, to make or build a house; to erect a building. Dig. 45, 1, 75, 7.

)Edificare in tuo proprio solo non licet quod alteri noceat. 3 Inst. 201. To build upon your own land what may injure another is not lawful.

A proprietor of land has no right to erect an edifice on his own ground, interfering with the due enjoyment of adjoining premises, as by overhanging them, or by throwing water from the roof and eaves upon them, or by obstructing ancient lights and windows. Broom, Max. 369.

[2Edificatum solo solo cedit. What is built upon land belongs to or goes with land. Broom, Max. 172; Co.Litt. 4a.

iEdificia solo cedunt. Buildings belong to [go with] the soil. Fleta, lib. 3, c. 2, § 12.

JEDILE, In Roman law, an officer who attended to the repairs of the temples and other public buildings; the repairs and cleanliness of the streets; the care of the weights and measures; the providing for funerals and games; and to regulating the prices of provisions. Ainsworth, Lex.; Smith, Lex.; Du Cange.

zEDILITUM EDICTUM. In the Roman law, the lEdilitian Edict.

An edict providing remedies for frauds in sales, the execution of which belonged to the curule **Dig. 21,** 1. See Cod. 4, 58. That provision by which the buyer of a diseased or imperfect slave, horse, or other animal was relieved at the expense of the vendor who had sold him as sound knowing him to be imperfect. Calvinus, Lex.

)EFESN. In old English law, the remuneration to the proprietor of a domain /for the privilege of feeding swine under the oaks and beeches of his woods.

ZEGROTO. Lat. Being sick or indisposed. A term used in some of the older reports. "Holt *cegroto."* 11 Mod. 179.

AEGYLDE. Uncompensated, unpaid for, unavenged. From the participle of exclusion, a, *ce,* or *ex,* (Goth.,) and *gild,* payment, requital. Anc. Inst.Eng.

AEL. A Norman French term signifying "grandfather." It is also spelled *"aieul"* and *"ayle."* Kelham.

ZEQUIOR EST DISPOSITIO LEGIS QUAM HOMINIS. The disposition of the law is more equitable than that of man. 8 Coke, 152.

JEQUITAS. In the civil law, equity, as opposed to *strictum* or *summum jus, (q. v.).* Otherwise called *cequum, cequum bonum,* cequum et bonum, *cequum et justum.* Calvin.

Referring to the use of this term, Prof. Gray says (Nature and Sources of the Law 290) : "Austin and Maine take *cequitas* as having an analogous meaning to equity ; they apply the term to those rules which the prwtors introduced through the Edict in modification of the *jus civile,* but it seems to be an error to suppose that *cequitas* had this sense in the Roman Law." He quotes Prof. Clark (Jurisprudence 367) as doubting "whether *cequitas* is ever clearly used by the Roman jurists to indicate simply a *department* of Law" and expresses the opinion that an examination of the authorities more than justifies his doubt. *iEquitas* is opposed to' *strictum jus* and varies in meaning between reasonable modification of the letter and substantial justice. It is to be taken as a frame of mind in dealing with legal questions and not as a source of law.

See JEquum et Bonum.

ZEquitas agit in personam. Equity acts upon the person. 4 Bouv.Inst. n. 3733.

2Equitas est correctio legis generaliter latx, qua parte deficit. Equity is the correction of that wherein the law, by reason of its generality, is deficient. Plowd. 375.

ZEquitas est correctio qudam legi adhibita, quia ab ea abest aliquid propter generalem sine exceptione comprehensionem. Equity is a certain correction applied to law, because on account of its general comprehensiveness, without an exception, something is absent from it. Plowd. 467.

lEquitas est perfecta qudam ratio quajus scripturn interpretatur et emendat; nulla scriptura comprehensa, sed solum in vera ratione consistens. Equity is a certain perfect reason, which interprets and amends the written law, comprehended in no writing, but consisting in right reason alone. Co.Litt. 24b.

2-Equitas est quasi aequalitas. Equity is as it were equality; equity is a species of equality or equalization. .Co.Litt. 24.

ZEquitas ignorantiie opitulatur, oscitanthe non item. Equity assists ignorance, but not carelessness.

*Xquitas* non facit jus, sed juri auxiliatur. Equity does not make law, but assists law. Lofft, 379.

iEquitas nunquam contravenit legis. Equity never counteracts the laws.

1-Equitas sequitur legem. Equity follows the law. 5 Barb.N.Y. 277, 282.

iEquitas supervacua odit. Equity abhors superfluous things. Lofft, 282.

IEquitas uxoribus, liberis, creditoribus maxime favet. Equity favors wives and children, creditors most of all.

ZEQUUM ET BONUM. "The Roman conception involved in *cequum et bonum'* or *`cequitas'* is identical with what we mean by 'reasonable' or nearly so.

"On the whole, the natural justice or 'reason of the thing' which the common law recognizes and applies does not appear to differ from the 'law of nature' which the Romans identified with *jus gentium,* and the medieval doctors of the civil and common law boldly adopted as being divine law revealed through man's natural reason." Sir F. Pollock, Expans. of C. L. 111, citing [1902] 2 Ch. 661, where *jus naturale* and cequum *et* bonum were taken to have the same meaning.

1Equum et bonum est lex legum. What is equitable and good is the law of laws. Hob. 224.

IEQUUS. Lat. Equal; even. A provision in a will for the division of the residuary estate *ex cequus* among the legatees means equally or evenly. Archer v. Morris, 47 Atl. 275, *61* N.J.Eq. 152.

JERA, or ERA. A fixed point of chronological time, whence any number of years is counted; thus, the Christian era began at the birth of Christ, and the Mohammedan era at the flight of Mohammed from Mecca to Medina. The derivation of the word has been much contested. Wharton.

ZERARIUM. Lat. In the Roman law. The treasury, ( *fiscus.)* Calvin.

ATRIAL NAVIGATION. See Aeronautics.

AERODROME. A term originally applied by Professor Langley to his flying machine but now used in the same sense as "airport" ( *q. v.).*

AERONAUT. This term under some statutes includes every person who, being in or upon an airship or anything attached thereto, undertakes to direct its ascent, course, or descent in the air, or the ascent, course, or descent in the air of anything attached to such airship.

Under the Uniform Aeronautics Act it includes aviator, pilot, baloonist, and every other person having any part in the operation of aircraft while in flight. See Aeronautics.

AERONAUTIC ACTIVITY. The term is broad enough to cover what is ordinarily incident to an airplane trip.. The aeronautic activities of one who takes such a trip do not begin or end with the actual flight, but include his presence or movements in or near to the machine incidental to beginning or concluding the trip. Blonski v. Bankers' Life Co., 209 Wis. 5, 243 N.W. 410.

Insured killed when struck by propeller after emerging from airplane at end of flight, Day v. Equitable Life Assur. Soc. of U. S., C.C.A.Colo., 83 F.2d 147, 148. To a contrary effect: Tierney v. Occidental Life Ins. Co., 89 Cal.App. 779, 265 P. 400.

AERONAUTIC EXPEDITION. Traveling as passenger in airplane operated in regular passenger service was engaging in "aeronautic expedition" under life policy. Gibbs v. Equitable Life Assur. Soc. of U. S., 256 N.Y. 208, 176 N.E. 144. Contra. King v. Equitable Life Assur. Soc. of United States, 232 Iowa 541, 5 N.W.2d 845, 846, 155 A.L.R.

1022. Pleasure trip in airplane over airport on pleasant day was not "aeronautic expedition" under life policy. Day v. Equitable Life Assur. Soc. of U. S., C.C.A.Colo., 83 F.2d 147, 149.

AERONAUTIC OPERATION. Passenger on regularly scheduled airplane trip engaged in "aeronautic operation," within life policy. Day v. Equitable Life Assur. Soc. of U. S., C.C.A.Colo., 83 F.2d 147, 148. Did not include casual trip in airplane; "aeronautic operations" signifying more than occasional venture. Gits v. New York Life Ins. Co., C.C.A.I11., 32 F.2d 7, 10. Nor a pleasure flight in airplane. Day v. Equitable Life Assur. Soc. of U. S., C.C.A.Colo., 83 F.2d 147, 148.

AERONAUTICS. The science, art or practice of sailing in the air; aerial navigation; the branch of aerostatics which treats of floating in or navigating the air as in an airship or airplane. Massachusetts Protective Ass'n v. Bayersdorfer, C.C.A. Ohio, 105 F.2d 595, 597. Operation of aircraft. Equitable Life Assur. Soc. of United States v. Dyess, 194 Ark. 1023, 109 S.W.2d 1263, 1265.

It is divided into two branches: aerostation, dealing with machines which, like balloons, are lighter than air ; and aviation, dealing with artificial flight by machines which are heavier than air. Bew v. Travelers' Ins. Co., 95 N.J.Law, 533, 112 A. 859, 860, 14 A.L.R. 983.

A passenger in an airplane, whether he takes part in its operation or not, "participates in aeronautics" within the meaning of an insurance policy. Meredith v. Business Men's Acc. Ass'n of America, 213 Mo.App. 688, 252 S.W. 976, 977. Contra as to a transport airplane passenger who could not pilot an airplane, had no knowledge of flying, and at time of accident was traveling on private business. Gregory v. Mutual Life Ins. Co. of New York, C.C.A.Ark., 78 F.2d 522, 524. As to an insured, who was a fare-paying passenger on a commercial transport plane over an established route while plane was wholly under the control of others. Bayersdorfer v. Massachusetts Protective Ass'n, D.C.Ohio, 20 F.Supp. 489, 492. A father riding with son as guest in airplane purchased by father for son. Day v. Equitable Life Assur. Soc. of U. S., C.C.A.Colo., 83 F.2d 147, 149. And where insured after alighting from a flight, in bending over to avoid a wire, was struck by the propeller of the aeroplane. Tierney v. Occidental Life Ins. Co. of California, 89 Cal.App. 779, 265 P. 400, 401.

See, also, Aircraft; Airship; Airport; Airway; Aviation.

AEROPLANE. See Aircraft; Hydro-Aeroplane; Seaplane.

AEROSTATICS. "Ae"cstatics" is divided into two main branches; aer: " ation dealing, properly, with machines, which, like balloons, are lighter than air, and aviation dealing with the problem of artificial flight by means of flying machines, which, like birds, are heavier than air. Swasey v. Massachusetts Protective Ass'n, C.C.A.Ariz., 96 F.2d 265, 266.

AEROSTATION. See Aerostatics, and Aeronautics, note.

ES. Lat. In the Roman law, money, (literally, brass;) metallic money in general, including gold. Dig. 9, 2, 2, pr.; Dig. 9, 2, 27, 5; Dig. 50, 16, 159.

ES ALIENUM. A civil law term signifying a debt. Literally translated, the money of another; the civil law considered borrowed money as the property of another, as distinguished from *ces suum,* one's own money.

SUUM. One's own money. In the Roman law, debt; a debt; that which others owe to us, *(quod alii nobis debent.)* Dig. 50, 16, 213.

IESNECIA. In old English law, Esnecy; the right or privilege of the eldest born. Spelman; Glanv. lib. 7, c. 3; Fleta, lib. 2, c. 66, §1 5, 6.

IESNECIUS. See Anecius; Aesnecia.

ESTHETIC. Relating to that which is beautiful or in good taste. People v. Wolf, 216 N.Y.S. 741, 744, 127 Misc. 382. Pertaining to the beautiful. Ha$^{y}$-A-Tampa Cigar Co. v. Johnson, 149 Fla. 148, 5 So.2d 433, 440.

ESTIMATIO CAPITIS. Lat. The value of a head.

In Saxon law, the estimation or valuation of the head ; the price or value of a man. The price to be paid for taking the life of a human being. By the laws of Athelstan, the life of every man not excepting that of the king himself, was estimated at a certain price, which was called the *were,* or *cestimatio capitis.* Crabb, Eng.Law, c. 4.

ETAS. Lat. In the civil law. Age.

ESTIMATIO PRIETERITI DELICTI EX POSTREMO FACTO NUNQUAM CRESCIT. The weight of a past offense is never increased by a subsequent fact. Bacon.

ETAS INFANTIZE (also written infantili) PROXIMA. The age next to infancy; the first half of the period of childhood *(pueritia,)* extending from seven years to ten and a half. Inst. 3, 20, 9; 4 Bl.Comm. 22. See Age.

ETAS LEGITIMA. Lawful age; the age of twenty-five. Dig. 3, 5, 27, pr.; Id. 26, 2, 32, 2; Id. 27, 7, 1, pr.

ETAS PERFECTA. Complete age; full age; the age of twenty-five. Dig. 4, 4, 32; Id. 22, 3, 25, 1.

ETAS PRIMA. The first age; infancy, *(tinfantia).* Cod. 6, 61, 8, 3.

ETAS PUBERTATI PROXIMA. The age next to puberty; the last half of the period of childhood *(pueritia),* extending from ten and a half years to fourteen, in which there might or might not be criminal responsibility according to natural capacity or incapacity. Inst. 3, 20, 9; 4 Bl.Comm. 22. See Age.

ETATE PROBANDA. A writ which inquired whether the king's tenant holding in chief by chivalry was of full age to receive his lands. It was directed to the escheater of the county. Now disused.

ETHELING. In Saxon law, a noble; generally a prince of the blood.

AFFAIR. (Fr.). A law suit.

The term frequently refers to an amour; intrigue; liaison.

AFFAIRS. An inclusive term, bringing within its scope and meaning anything that a person may do. Walker v. United States, C.C.A.Mo., 93 F.2d 383, 391.

A person's concerns in trade or property; business. Bragaw v. Bolles, 51 N.J.Eq. 84, 25 A. 947. That which is done or to be clone. Wicks v. City and County of Denver, 61 Colo. 266, 156 P. 1100, 1103. A corporation's borrowing money, and methods of obtaining loans. Cameron v. First Nat. Bank, Tex.Civ.App., 194 S.W. 469, 470. Person and estate of alleged incompetent. State ex rel. Bevan v. Williams, 316 Mo. 665, 291 S.W. 481, 482. General operations carried on by an employer. Gocs v. Thomas E. Coale Coal Co., 142 Pa.Super. 479, 16 A.2d 720, 723.

AFFECT. To act upon; influence; change; enlarge or abridge; often used in the sense of acting injuriously upon persons and things. Ryan v. Carter, 93 U.S. 84, 23 L.Ed. 807; Tyler v. Wells, 2 Mo.App. 538; Holland v. Dickerson, 41 Iowa 373; Meurer v. Hooper, Tex.Civ.App., 271 S.W. 172, 177. Does not mean to impair. Harris v. Friend, 24 N.M. 627, 175 P. 722, 725. To lay hold of or attack (as a disease does) ; to act, or produce an effect upon; to impress or influence (the mind or feelings) ; to touch. State v. Hurd, 5 Wash.2d 308, 105 P.2d 59, 61, 62. Acted upon, influenced, concerned. In re National Lock Co., D.C.Ill., 9 F. Supp. 432, 433. Implies an indirect relation. Chapman v. Home Ice Co., D.C.Tenn., 43 F.Supp. 424, 428.

AFFECTED WITH A PUBLIC INTEREST. Affirmatively, phrase means that a business or property must be sun or be so employed as to justify the conclusion that it has been devoted to a public use, and its use thereby in effect granted to the public. Negatively, it does not mean that a business is affected with a public interest merely because it is large or because the public are warranted in having a feeling of concern in respect of its maintenance. H. Earl Clack Co. v. Public Service Commission of State of Montana, 94 Mont. 488, 22 P.2d 1056.

A business given a virtual monopoly in its field or where the public adapt their business or conduct to the methods used by it. Western Buse Telephone Co. v. Northwestern Bell Telephone Co., 188 Minn. 524, 248 N.W. 220, 229. The business must affect the prosperity of a large part of file members of the body politic. Ex parte Kazas, 22 Cal.App. 2d 161, 70 P.2d 962, 967. This phrase means something more than "quasi public," or "not strictly private," and similar phrases employed as a basis for upholding police regulations. A business is not affected with a public interest merely because the public derives benefit, accommodation, ease or enjoyment from its existence or operation, such as admissions to places of amusement or entertainment. Tyson & Bro.-United Theatre Ticket Offices v. Banton, 273 U.S. 418, 47 S.Ct. 426, 429, 71 L.Ed. 718, 58 A.L.R. 1236.

Businesses. Three classes of such businesses : (1) Those carried on under the authority of a public grant or privilege expressly or impliedly imposing an affirmative duty of rendering public service demanded by the public, such as common carriers and public utilities ; (2) occupations regarded as exceptional, the public interest attaching to which has been recognized from earliest times and has survived the period of arbitrary laws by Parliament or colonial legislatures for regulating trades and callings, such as inns, cabs, and grist mills ; (3) businesses which, though not public at their inception, have become such by devoting their business to a public use, thereby granting the public an interest in that use and subjecting themselves to public regulation to extent of that interest, although the property continues to belong to its private owner, and to be entitled to protection accordingly, as public warehouses for storage of grain, .banks, and insurance companies. Rohrer v. Milk Control Board, 121 Pa.Super. 281, 184 A. 133, 138.

AFFECTIO TUA NOIVIEN IMPONIT OPERI TUO. Your disposition (or motive, intention) gives name (or character) to your work or act. Bract. fol. 2b, 101b.

AFFECTION. The making over, pawning, or mortgaging of a thing to assure the payment of a sum of money, or the discharge of some other duty or service. Crabb, Technol.Dict.

In a medical sense, an abnormal bodily condition. A local "affection" is not a local disease within the meaning of an insurance policy, unless the affection has sufficiently developed to have some bearing on the general health. Cady v. Fidelity & Casualty Co. of New York, 134 Wis. 322, 113 N.W. 967, 971, 17 L.R.A.,N.S., 260.

AFFECTUS. Disposition; intention, impulse or affection of the mind. One of the causes for a challenge of a juror is propter *affectum,* on account of a suspicion of *bias* or favor. 3 Bl.Comm. 363; Co.Litt. 156.

AFFECTUS PUNITUR LICET NON SEQUATUR EFFECTUS. The intention is punished although the intended result does not follow. 9 Coke, 55.

AFFEER. To assess, liquidate, appraise, fix in amount.

*Account*

To confirm it on oath in the exchequer. Cowell ; Blount; Spelman.

*Amercement*

To establish the amount which one amerced in a court-leet should pay. See Amercement.

AFFEERORS. Persons who, in court-leets, upon oath, settle and moderate the fines and amercements imposed on those who have committed offenses arbitrarily punishable, or that have no express penalty appointed by statute. They are also appointed to moderate fines, etc., in courts-baron. Cowell.

AFFERMER. L. Fr. To let to farm. Also to make sure, to establish or confirm. Kelham.

AFFIANCE. To assure by pledge. A plighting of troth between man and woman. Littleton, § 39.

An agreement by which a man and woman promise each other that they will marry together. Pothier, *Traitó du Mar,* n. 24. Co.Litt. 34 a. See Dig. 23, 1, 1; Code, 5. 1. 4.

AFFIANT. The person who makes and subscribes an affidavit. The word is used, in this sense, interchangeably with "deponent." But the latter term should be reserved as the designation of one who makes a deposition.

AFFIDARE. To swear faith to; to pledge one's faith or do fealty by making oath. Cowell. Used of the mutual relation arising between landlord and tenant; 1 Washb.R.P. 19; 1 Bla.Com. 367; Termes de la Ley, *Fealty.* Affidavit is of kindred meaning.

AFFIDARI. To be mustered and enrolled for soldiers upon an oath of fidelity.

AFFIDATIO. A swearing of the oath of fidelity or of fealty to one's lord, under whose protection the quasi-vassal has voluntarily come. Brown.

AFFIDATIO DOMINORUM. An oath taken by the lords in parliament.

AFFIDATUS. One who is not a vassal, but who for the sake of protection has connected himself with one more powerful. Spelman; 2 Bl.Comm. 46.

AFFIDAVIT. A written or printed declaration or statement of facts, made voluntarily, and confirmed by the oath or affirmation of the party making it, taken before an officer having authority to administer such oath. Cox v. Stern, 170 Ill. 442, 48 N.E. 906, 62 Am.St.Rep. 385; Hays v. Loomis, 84 Ill. 18. A statement or declaration reduced to writing, and sworn to or affirmed before some officer who has authority to administer an oath or affirmation. Shelton v. Berry, 19 Tex. 154, 70 Am.Dec. 326, and In re Breidt, 84 N.J.Eq. 222, 94 A. 214, 216.

A written or printed declaration or statement of facts, made voluntarily, and confirmed by the oath or affirmation of the party making it, taken before an officer having authority to administer such oath. June v. School Dist. No. 11, Southfield Tp., 283 Mich. 533, 278 N.W. 676, 677, 116 A.L.R. 581. Any voluntary ex parte statement reduced to writing and sworn to or affirmed before some person legally authorized to administer oath or affirmation, made without notice to adverse party and without opportunity to cross-examine. Kirk v. Hartlieb, 193 Ark. 37, 97 S.W.2d 434, 435, 436. The word sometimes includes "depositions." U. S. v. Kaplan, D.C.Ga., 286 F. 963, 970.

"Affidavits" are of two kinds; those which serve as evidence to advise the court in the decision of some preliminary issue or determination of some substantial right, and those which merely serve to invoke the judicial power. Worthen v. State, 189 Ala. 395, 66 So. 686, 688.

AFFIDAVIT OF DEFENSE. An affidavit stating that the defendant has a good defense to the plaintiff's action on the merits. The statements required in such an affidavit vary considerably in the different states where they are required. Called also an affidavit of merits *(q. v.),* as in Massachusetts.

AFFIDAVIT OF DEMAND. "Affidavit of demand" filed under Code section to obtain judgment for want of affidavit of defense held not equivalent of "declaration." Penn Central Light & Power Co. v. Central Eastern Power Co., 6 W. W.Harr. 74, 171 A. 332.

AFFIDAVIT OF MERITS. One setting forth that the defendant has a meritorious defense (substantial and not technical) and stating the facts constituting the same. Palmer v. Rogers, 70 Iowa 381, 30 N.W. 645. Represents that, on the substantial facts of the case, justice is with the affiant. Wendel v. Wendel, 58 S.D. 438, 236 N.W. 468, 469.

AFFIDAVIT OF SERVICE. An affidavit intended to certify the service of a writ, notice, or other document.

AFFIDAVIT TO HOLD TO BAIL. An affidavit required in many cases before the defendant in a civil action may be arrested. Such an affidavit must contain a statement, clearly and certainly expressed, by some one acquainted with the fact, of an indebtedness from the defendant to the plaintiff, and must show a distinct cause of action; 1 Chit.Pl. 165.

AFFILARE. L. Lat. To put on record; to file or affile. *Affiletur,* let it be filed. 8 Coke, 160. *De recordo affilatum,* affiled of record. 2 Ld. Raym. 1476.

AFFILE. A term employed in old practice, signifying to put on file. 2 Maule & S. 202. In modern usage it is contracted to *file.*

AFFILIATE. Signifies a condition of being united, being in close connection, allied, or attached as a member or branch. Johanson v. Riverside County Select Groves, 4 Cal.App.2d 114, 40 P.2d 530, 534.

"Affiliate with" is defined as to receive on friendly terms; to associate with; to be intimate with; to sympathize with; to consort with; and to connect or associate one's self with. Wolck v. Weedin, C.C.A.Wash., 58 F.2d 928, 930. But "affiliated" does not bear construction that one of affiliated organizations is in all particulars identical with or covered by parent organization with which it may be said to be affiliated. People v. Horiuchi, 114 Cal.App. 415, 300 P. 457, 460.

AFFILIATION. Imports less than membership in an organization, but more than sympathy, and a working alliance to bring to fruition the proscribed program of a proscribed organization, as distinguished from mere co-operation with a proscribed organization in lawful activities, is essential. Bridges v. Wixon, Cal., 326 U.S. 135, 65 S.Ct. 1443, 1447, 89 L.Ed. 2103.

It includes an element of dependability upon which the organization can rely which, though not equivalent to membership duty, rests upon course of conduct that could not be abruptly ended without giving at least reasonable cause for charge of breach of good faith. U. S. ex rel. Kettunen v. Reimer, C.C.A.N.Y., 79 F.2d 315, 317.

The act of imputing or determining the paternity of a bastard child, and the obligation to maintain it.

Corporations

Actual control of corporations by same interests is insufficient; legally enforceable control of stock of corporations by same interests being required. Island Petroleum Co. v. Commissioner of Internal Revenue, C.C.A., 57 F.2d 992, 994. Commences with acquisition of corporation from owners outside of group and ends with disposal of all properties or stock to those outside group. Hernandez v. Charles Ilfeld Co., C.C.A.N.M., 66 F.2d 236, 238.

Ecclesiastical Law

A condition which prevented the superior from removing the person affiliated to another convent. Guyot, Repert.

French Law

A species of adoption which exists by custom in some parts of France. The person affiliated succeeded equally with other heirs to the property acquired by the deceased to whom he had been affiliated, but not to that which he inherited.

AFFINAGE. A refining of metals. Blount.

AFFINES. In the civil law, connections by marriage, whether of the persons or their relatives. Calvinus, Lex.

Neighbors, who own or occupy adjoining lands. Dig. 10, 1, 12.

From this word we have affinity, denoting relationship by marriage; 1 Bla.Com. 434. The singular, *affinis,* is used in a variety of related significations—a boundary; Du Cange; a partaker or sharer, *affinis culpce* (an aider or one who has knowledge of a crime) ; Calvinus, Lex.

AFFINIS MEI AFFINIS NON EST MIHI AFFINIS. One who is related by marriage to a person related to me by marriage has no affinity to me. Shelf.Mar. & Div. 174.

AFFINITAS. Lat. In the civil law, affinity; relationship by marriage. Inst. 1, 10, 6.

AFFINITAS AFFINITATIS. Remote relationship by marriage. That connection between parties arising from marriage which is neither consanguinity nor affinity. Davidson v. Whitehill, 87 Vt. 499, 89 A. 1081, 1085. This term signifies the connection between the kinsmen of the two persons married, as, for example, the husband's brother and the wife's sister. Erskine, Inst. 1. 6. 8.

AFFINITY. A close agreement; relation; spiritual relation or attraction held to exist between certain persons. State ex inf. Norman v. Ellis, 325 Mo. 154, 28 S.W.2d 363, 367. Relation which, one spouse because of marriage has to blood relatives of the other. State v. Hooper, 140 Kan. 481, 37 P.2d 52.

Degrees of relationship by affinity are computed as are degrees of relationship by consanguinity. The doctrine of affinity grew out of the canonical maxim that marriage makes husband and wife one. The husband has the same relation, by affinity, to his wife's blood relatives as she has to them by consanguinity and vice versa. State v. Hooper, 140 Kan. 481, 37 P.2d 52.

Affinity *is* distinguished into three kinds : (1) *Direct,* or that subsisting between the husband and his wife's relations by blood, or between the wife and the husband's relations by blood; (2) *secondary,* or that which subsists between the husband and his wife's relations by marriage ; (3) *collateral,* or that which subsists between the husband and the relations of his wife's relations. Wharton.

In a larger sense, consanguinity or kindred. Co.Litt. 157a.

Quasi Affinity

In the civil law, the affinity which exists between two persons, one of whom has been betrothed to a kinsman of the other, but who have never been married.

AFFIRM. To ratify, make firm, confirm, establish, reassert. Cowell; Ashby v. Peters, 128 Neb. 338, 258 N.W. 639, 644, 99 A.L.R. 843.

In the practice of appellate courts, to *affirm* a judgment, decree, or order, is to declare that it is valid and right, and must stand as rendered below; to ratify and reassert it; to concur in its correctness and confirm its efficacy. Boner v. Fall River County Bank, 25 Wyo. 260, 168 P. 726, 727.

Contracts

Ratify and accept voidable contract. Cf. Adopt.

Pleading

To allege or aver a matter of fact; to 'state it affirmatively; the opposite of 'deny or *traverse.*

Practice

To make affirmation; to make a solemn and formal declaration or asseveration that an affidavit is true, that the witness will tell the truth, etc., this being substituted for an oath in certain cases. Also, to give testimony on affirmation.

AFFIRMANCE. In practice. The confirming, or ratifying of a former law, or judgment. Cowell; Blount.

The confirmation and ratification by an appellate court of a judgment, order, or decree of a lower court brought before it for review. See Affirm, note.

The ratification or confirmation of a voidable contract or act by the party who is to be bound thereby.

The term is in accuracy to be distinguished from *ratification,* which is a recognition of the validity or binding force as against the party ratifying, of some act performed by another person; and from *confirmation,* which would seem to apply more properly to cases where a doubtful authority has been exercised by another in behalf of the person ratifying; but these distinctions are not generally observed with much care.

AFFIRMANCE DAY GENERAL. In the English court of exchequer, a day appointed by the judges of the common pleas, and barons of the exchequer, to be held a few days after the beginning of every term for the general affirmance or reversal of judgments. 2 Tidd, Pr. 1091.

AFFIRMANT. A person who testifies on affirmation, or who affirms instead of taking an oath. See Affirmation. Used in affidavits and depositions which are *affirmed,* instead of sworn to in place of the word "deponent."

AFFIRMANTI, NON NEGANTI INCUMBIT PROBATIO. The [burden of] proof lies upon him who affirms, not upon one who denies. Steph. Pl. 84.

AFFIRMANTIS EST PROBARE. He who affirms must prove. Porter v. Stevens, 9 Cush., Mass., 535.

AFFIRMATION. In practice, a solemn and formal declaration or asseveration that an affidavit is true, that the witness will tell the truth, etc., this being substituted for an oath in certain cases.

A solemn religious asseveration in the nature of an oath. 1 Greenl.Ev. § 371.

Quakers, as a class, and other persons who have conscientious scruples against taking an oath, are allowed to make affirmation in any mode which they may declare to be binding upon their consciences, in confirmation of the truth of testimony which they are about to give. 1 Atk. 21, 46; Cowp. 340, 389; 1 Leach Cr.Cas. 64; 1 Ry. & M. 77.

AFFIRMATION OF FACT. A statement concerning a subject-matter of a transaction which might otherwise be only an expression of opinion but which is affirmed as an existing fact material to

t lie transaction, and reasonably induces the other party to consider and rely upon it, as a fact. Stone v. McCarty, 64 Cal.App. 158, 220 P. 690, 694.

AFFIRMATIO UNIUS EXCLUSIO EST ALTERICS. The affirmance of one thing is the exclusion of the other. State v. Evans, 214 La. 472, 38 So.2d 140, 147.

AFFIRMATIVE. That which declares positively; that which avers a fact to be true; that which establishes; the opposite of negative.

The party who, upon the allegations of pleadings joining issue, is under the obligation of making proof, in the first instance, of matters alleged, is said to hold the affirmative, or, in other words, to sustain the burden of proof. Abbott.

As to affirmative "Damages," "Plea," "Proof," "Warranty," see those titles.

AFFIRMATIVE ACTION. The "affirmative action" which the National Labor Relations Board is authorized to take to effectuate the policies of the National Labor Relations Act is action to make effective the redress of rights conferred upon employees by the act. National Labor Relations Board v. National Casket Co., C.C.A.2, 107 F.2d 992, 998.

It is broad, but is not unlimited, is remedial not punitive, and is to be exercised in aid of the Board's authority to restrain violations and as a means of removing or avoiding the consequences of violations. National Labor Relations Board v. Fansteel Metallurgical Corporation, 306 U.S. 240, 59 S.Ct. 490, 497, 83 L. Ed. 627, 123 A.L.R. 599.

It is not disciplinary. National Labor Relations Board v. Leviton Mfg. Co., C.C.A.2, 111 F.2d 619, 621.

AFFIRMATIVE AUTHORIZATION. Something more than authority by mere implication. White, Gratwick & Mitchell v. Empire Engineering Co., 125 Misc. 47, 210 N.Y.S. 563, 572.

AFFIRMATIVE CHARGE. The general "affirmative charge" is an instruction to the jury that, whatever the evidence may be, defendant cannot be convicted under the count in the indictment to which the charge is directed. Coker v. State, 18 Ala.App. 550, 93 So. 384, 386.

AFFIRMATIVE DEFENSE. In code pleading. New matter constituting a defense; new matter which, assuming the complaint to be true, constitutes a defense to it. Carter v. Eighth Ward Bank, 33 Misc. 128, 67 N.Y.S. 300.

AFFIRMATIVE EASEMENT. An "affirmative easement" is one which gives to the owner of the dominant tenement the right to use the servient tenement, or to do some act thereon which would otherwise be unlawful. Clements v. Taylor, Tex. Civ.App., 184 S.W.2d 485, 487.

AFFIRMATIVE PREGNANT. In pleading, an affirmative allegation implying some negative in favor of the adverse party. Fields v. State, 134 Ind. 46, 32 N.E. 780.

AFFIRMATIVE PROOF. Such evidence of the truth of matters asserted as tends to establish them, regardless of character of evidence offered. Glass v. Newport Clothing Co., 110 Vt. 368, 8 A.2d 651, 654.

AFFIRMATIVE RELIEF. Relief, benefit, or compensation which may be due and granted to defendant. Garner v. Hannah, 6 Duer, N.Y., 262. Relief for which defendant might maintain an action independently of plaintiff's claim and on which he might proceed to recovery, although plaintiff abandoned his cause of action or failed to establish it. Southwestern Surety Ins. Co. v. Walser, 77 Okl. 240, 188 P. 335, 336.

AFFIRMATIVE STATUTE. A statute couched in affirmative or mandatory terms. 1 Bl.Comm. 142.

One which directs the doing of an act, or declares what shall be done ; as a *negative* statute is one which prohibits a thing from being done, or declares what shall not be done. Blackstonp describes affirmative acts of parliament as those "wherein justice is directed to be done according to the law of the land." 1 Bl.Comm. 142.

AFFIRMATIVE WARRANTY. Affirms existence of a fact at time policy is entered into, while promissory warranty requires that something be done or not done after policy has taken effect. Sentinel Life Ins. Co. v. Blackmer, C.C.A.Colo., 77 F.2d 347, 350.

AFFIX. Fix or fasten in any way, to attach physically. Penn v. Dyba, 115 Cal.App. 67, 1 P.2d 461, 464. To attach to, inscribe, or impress upon, as a signature, a seal, a trade-mark. Pen.Code N.Y. § 367. To attach, add to, or fasten upon, permanently, as in the case of fixtures annexed to real estate.

A thing is deemed to be affixed to land when it is attached to it by the roots; as in the case of trees, vines, or shrubs ; or imbedded in it, as in the case of walls ; or permanently resting upon it, as in the case of buildings ; or permanently attached to what is thus permanent, as by means of cement, plaster, nails, bolts, or screws. Miller v. Waddingham, 3 Cal.Unrep.Cas. 375, 25 Pac. 688, 11 L.R.A. 510; Tolle v. Vandenberg, 44 Okl. 780, 146 P. 212, 213.

AFFIXING. Securely attached. Mechanics' Nat. Bank of Trenton v. Newman, 137 Misc. 587, 244 N.Y.S. 529, 531.

AFFIXUS. In the civil law, affixed, fixed, or fastened to.

AFFLICTION. A distress of mind or body; that which causes continuing anguish or suffering.

AFFORARE. To set a price or value on a thing. Blount.

AFFORATUS. Appraised or valued, as things vendible in a market. Blount.

AFFORCE. To add to; to increase; to strengthen; to add force to.

AFFORCE THE ASSIZE. In old English practice, a method of securing a verdict, where the jury disagreed, either by confining them without meat and drink, or, more anciently, by adding other jurors to the panel, to a limited extent, until twelve could be found who were unanimous. Bract. fol. 185b, 292a; Fleta, lib. 4, c. 9, § 2; 2 Reeve, Hist.Eng.Law, 267.

AFFORCIAMENTUM. In old English law, a fortress or stronghold, or other fortification. Cowell.

The calling of a court upon a solemn or extraordinary occasion. Id.

AFFOREST. To convert land into a forest in the legal sense of the word.

AFFORESTATION. The turning of a part of a country into forest or woodland or subjecting it to forest law, q. v.

AFFOUAGE. In French law, the right of the inhabitants of a commune or section of a commune to take from the forest the fire-wood which is necessary for their use. Duverger.

AFFRANCHIR. L. Fr. To set free. Kelham.

AFFRANCHISE. To liberate; to make free.

AFFRAY. The fighting of two or more persons in some public place to the terror of the people. Wallace v. Commonwealth, 207 Ky. 122, 268 S.W. 809, 813.

Where two or more persons voluntarily or by agreement engage in any fight, or use any blows or violence towards each other in an angry or quarrelsome manner, in any public place to the disturbance of others.

Words are insufficient, but if one person, by such abusive language toward another as is calculated and intended to bring on a fight, induces the other to strike him, both are guilty of "affray." State v. Maney, 194 N.C. 34, 138 S.E. 441, 442.

It differs from a riot in not being premeditated. Hawk. P.C. bk. 1, c. 65, § 3; 4 Bl.Comm. 146; 1 Russ.Crimes, 271.

AFFRECTAMENTUM. Affreightment; a contract for the hire of a vessel. From the Fr. *fret,* which, according to Cowell, meant tons or tonnage. *Affreightamentum* was sometimes used. Du Cange.

AFFREIGHTMENT. A contract of affreightment is a contract with a ship-owner to hire his ship, or part of it, for the carriage of goods. The Fred Smartley, Jr., C.C.A.Va., 100 F.2d 971, 973.

Such a contract generally takes the form either of a charter-party or of a bill of lading. Bramble v. Culmer, 78 Fed. 501, 24 C.C.A. 182. A contract to transport goods constitutes a contract of "affreightment," although there is towage service connected therewith. The Independent, D.C.La., 37 F.Supp. 106, 111.

In French law, freighting and affreighting are distinguished. The owner of a ship freights it, *(le frete;)* he is called the freighter, *(freteur;)* he is the letter or lessor, *(locateur, locator.)* The merchant affreights *(affrete)* the ship, and is called the affreighter, *(affreteur;)* he is the hirer, *(locataire, conductor.)* Emerig. Tr. des Ass. c. 11, § 3.

AFFRETEMENT. Fr. In French law, the hiring of a vessel; affreightment *(q. v.).* Called also *nolissement.* Ord.Mar. liv. 1, tit. 2, art. 2; Id. liv. 3, tit. 1, art. 1.

AFFRI. In old English law, plow cattle, bullocks or plow horses. *Affri,* or *afri carucce;* beasts of the plow. Spelman.

AFFRONT. An insult or indignity; assault, insololence.

AFORESAID. Before, or already said, mentioned, or recited; premised. Plowd. 67. Alabama Great Southern R. Co. v. Smith, 191 Ala. 643, 68 So. 56, 57. Foresaid is used in Scotch law.

Although the words "preceding" and "aforesaid" generally mean next before, and "following" means next after, yet a different signification will be given to them if required by the context and the facts of the case. Simpson v. Robert, 35 Ga. 180.

AFORETHOUGHT. In criminal law, deliberate; planned; premeditated; prepense. State v. Fiske, 63 Conn. 388, 28 A. 572. See Malice Aforethought; Premeditation; 4 Bla.Com. 199; Respublica v. Mulatto Bob, 4 Da11., Pa., 146, 1 L.Ed. 776; U. S. v. Cornell, 2 Mas. 91, Fed.Cas.No.14,868.

"Aforethought" as used in the law of murder means thought of beforehand and for any length of time, however short, before the doing of the act, and is synonymous with premeditation. State v. Smith, 26 N.M. 482, 194 P. 869, 872.

AFRICAN DESCENT. Persons of African nativity or of "African descent" within the meaning of the Naturalization Act, as amended by Act July 14, 1870 (8 U.S.C.A. § 703 note), are members of the negro races of Africa or their descendants by intermixture with races constituting free white persons, the negro races referred to being those from which the emancipated slaves in the United States descend. Ex parte Shahid, D.C.S.C., 205 F. 812, 815.

AFTER. Later, succeeding, subsequent to, inferior in point of time or of priority or preference.

Subsequent in time to. Cheney v. National Surety Corporation, 256 App.Div. 1041, 10 N.Y.S.2d 706. At. Hyman Bros. Box & Label Co. v. Industrial Accident Commission, 180 Cal. 423, 181 P. 784, 786. On and after New York Trust Co. v. Portland Ry. Co., 197 App.Div. 422, 189 N.Y.S. 346, 348. "At the end of" or "as soon as," and in computation of time, is generally understood in sense of excluding day of date mentioned. Taylor v. National Life & Accident Ins. Co., Tex.Civ.App., 63 S.W.2d 1082, 1083. But the words "after the filing" as used in sections 63 and 68 of the Bankruptcy Act (11 U.S.C.A. §§ 103, 108) do not mean the day after that of filing, but refer to the very instant of filing if ascertainable. In re Ledbetter, D.C.Ga., 267 F. 893, 896. A note payable generally "after date," is payable on demand. Love v. Perry, 19 Ga.App. 86, 90 S.E. 978, 979.

AFTER-ACQUIRED. Acquired after a particular date or event. Thus, a judgment is a lien on after-acquired realty, *i. e.,* land acquired by the debtor after entry of the judgment. Hughes v. Hughes, 152 Pa. 590, 26 A. 101.

AFTER ACQUIRED TITLE. Doctrine under which title acquired by grantor who previously attempted to convey title to land which he did not in fact own, inures automatically to benefit of prior grantees. Perkins v. White, Miss., 43 So.2d 897, 899; Morris v. Futischa, 194 Okl. 224, 148 P.2d 986, 987.

AFTER-BORN CHILD. A statute making a will void as to after-born children means physical birth, and is not applicable to a child legitimated by the marriage of its parents. Appeal of McCulloch, 11.3 Pa. 247, 6 A. 253. See En Ventre Sa Mere; Posthumous Child.

AFTER-DISCOVERED. Discovered or made known after a particular date or event.

AFTER-DISCOVERED EVIDENCE. See Evidence.

AFTER SIGHT. This term as used in a bill payable so many days after sight, means after legal sight; that is, after legal presentment for acceptance. The mere fact of having seen the bill or known of its existence does not constitute legal "sight." Mitchell v. Degrand, 17 Fed.Cas. 494.

AFTERMATH. A second crop of grass mown in the same season; also the right to take such second crop. See 1 Chit.Gen.Pr. 181.

"Aftermath" as used in the manufacture of window glass means the colder glass remaining on and in molten bath after drawing of glass cylinder. Okmulgee Window Glass Co. v. Window Glass Mach. Co., C.C.A.Okl., 265 F. 626, 630.

AFTERNOON. May mean the whole time from noon to midnight, or it may mean the earlier part of that time as distinguished from evening. Clevenger v. Carl B. King Drilling Co., Tex.Civ. App., 62 S.W.2d 1001. But ordinarily means that part of day between noon and evening. Buttrick v. Woman's Hospital Aid Ass'n, 87 N.H. 194, 177 A. 416, 418.

AFTERTHOUGHT. A thought composed after the event and with deliberation. A devise to escape difficulty.

AFTERWARD, AFTERWARDS. Subsequent in point of time; synonymous with "thereafter," Lamoutte v. Title Guaranty & Surety Co., 165 App. Div. 573, 151 N.Y.S. 148, 154, or with "then," Boyce v. Mosely, 102 S.C. 361, 86 S.E. 771, 772.

AGAINST. Adverse to; contrary, Cram v. Meagher, 113 Vt. 463, 35 A.2d 855, In re Dean's Estate, 350 Mo. 494, 166 S.W.2d 529, 533. Signifies discord or conflict; opposed to; without the consent of; in contact with. Palmer v. Superior Mfg. Co., D.C. N.Y., 203 F. 1003, 1005, Clemens v. Perry, Tex.Civ. App., 29 S.W.2d 529, 533. Sometimes meaning "upon," which is almost, if not altogether, synonymous with word "on." Northern Pac. Ry. Co. v. Gas Development Co., 103 Mont. 214, 62 P.2d 204, 205. Denoting manifestation of raped woman's utmost reluctance and greatest resistance. State v. Egner, 317 Mo. 457, 296 S.W. 145, 146.

AGAINST THE EVIDENCE. Means "against the weight of the evidence." Cram v. Meagher, 113 Vt. 463, 35 A.2d 855.

AGAINST THE FORM OF THE STATUTE. Technical words which must be used in framing an indictment for a breach of the statute prohibiting the act complained of. The Latin phrase is *contra forman statuti, q.* v. State v. Murphy, 15 R.I. 543, 10 A. 585.

AGAINST THE PEACE. A technical phrase used in alleging a breach of the peace. See Contra Pacem. State v. Tibbetts, 86 Me. 189, 29 A. 979.

AGAINST THE WEIGHT OF THE EVIDENCE, "Contrary to the evidence". Russell v. Pilger, 113 Vt. 537, 37 A.2d 403, 411.

AGAINST THE WILL. Technical words which must be used in framing an indictment for robbery from the person, rape and some other offenses. Whittaker v. State, 50 Wis. 521, 7 N.W. 431, 36 Am.St.Rep. 856.

AGALMA. An impression or image of anything on a seal. Cowell.

AGARD. L. Fr. An award. Nul *fait agard;* no award made.

AGARDER. L. Fr. To award, adjudge, or determine; to sentence, or condemn.

AGE. The length of time during which a person has lived; the time at which one attains full personal rights and capacities. In law the term signifies those periods in the lives of persons of both sexes which enable them to do certain acts which, before they had arrived at those periods, they were prohibited from doing. 2 C.J.S., p. 1013.

As used in particular statutes, the term implies disability and, by definition, has been applied to all minors under a certain age and to others disabled by old age. Hampton v. Ewert, C.C.A.Okl., 22 F.2d 81, 87.

Age and schooling certificate. Collings-Taylor Co. v. American Fidelity Co., 96 Ohio St. 123, 117 N.E. 158.

Age fixed by law. Johnson v. Travelers' Ins. Co., 147 Or. 345, 32 P.2d 587.

Age of consent. Ex parte Hutchens, 296 Mo. 331, 246 S.W. 186, 189.

Age of legal consent. Johnson v. Alexander, 39 Cal.App. 177, 178 P. 297; Fisher v. Bernard, 65 Vt. 663, 27 A. 316.

Age of majority. Gates v. Shaffer, 72 Wash. 451, 130 P. 896.

Age of maturity. Commercial Bank & Trust Co. v. Noble, 112 So. 691, 146 Miss. 552.

Age of twenty-one years. Vanderbilt v. Eidman, 196 U.S. 480, 25 S.Ct. 331, 49 L. Ed. 563.

Legal Age. See Legal Age.

Legal school age. Inhabitants of Needham v. Wellesley, 139 Mass. 372, 31 N.E. 732.

AGE, *Awe, Aive.* L. Fr. Water. Kelham.

AGE PRAYER. A suggestion of nonage, made by an infant party to a real action, with a prayer that the proceedings may be deferred until his full age. It is now abolished. St. 11 Geo. IV.; 1 Wm. IV. c. 37, § 10; 1 Lil.Reg. 54; 3 Bl.Comm. 300.

AGENCY. Includes every relation in which one person acts for or represents another by latter's authority, Saums v. Parfet, 270 Mich. 165, 258 N.W. 235, where one person acts for another, either in the relationship of principal and agent, master and servant, or employer or proprietor and independent contractor, Gorton v. Doty, 57 Idaho 792, 69 P.2d 136, 139.

Properly speaking, agency relates to commercial or business transactions. Humble Oil & Refining Co. v. Bell, Tex.Civ.App., 172 S.W.2d 800,

803, and frequently is used in connection with an arrangement which does not: in law amount to an agency, as where the essence of an arrangement is bailment or sale, as in the case of a sale agency exclusive in certain territory. State Cornpensation Ins. Fund v. Industrial Accident Cornmission, 216 Cal. 351, 14 P.2d 306, 310.

It also designates a place at which business of company or individual is transacted by an agent. Johnson Freight Lines v. Davis, 170 Tenn. 177, 93 S.W.2d 637, 639.

The relation created by express or implied contract or by law, whereby one party delegates the transaction of some lawful business with more or less discretionary power to another, who undertakes to manage the affair and render to him an account thereof. State ex rel. Cities Service Gas Co. v. Public Service Commission, 337 Mo. 809, 85 S.W.2d 890, 894. Or where one person confides the management of some affair, to be transacted on his account, to other party. 1 Liverm. Prin. & Ag. 2. Or one party is authorized to do certain acts for, or in relation to the rights or property of the other. But means more than tacit permission, and involves request, instruction, or command. Klee v. U. S., C.C.A.Wash., 53 F.2d 58, 61. Being the consensual relation existing between two persons, by virtue of which one is subject to other's control. Tarver, Steele & Co. v. Pendleton Gin Co., Tex.Civ.App., 25 S.W.2d 156, 159.

*Actual agency.* Exists where the agent is really employed by the principal. Weidenaar v. N. Y. Life Ins. Co., 36 Mont. 592, 94 P. 1, 6.

*Agency* by *estoppel.* One created by operation of law and established by proof of such acts of the principal as reasonably lead to the conclusion of its existence. Sigel-Campion Live Stock Commission Co. v. Ardohain, 71 Colo. 410. 207 P. 82, 83. Arises where principal, by negligence in failing to supervise agent's affairs, allows agent to exercise powers not granted to him, thus justifying others in believing agent possesses requisite authority. Reifsnyder v. Dougherty, 301 Pa. 328, 152 A. 98, 100. Though principal have no notice of agent's conduct, Dispatch Printing Co. v. National Bank of Commerce, 109 Minn. 440, 124 N.W. 236, 50 L.R.A.,N.S., 74.

*Agency of necessity.* A term sometimes applied to the kind of implied agency which enables a wife to procure what is reasonably necessary for her maintenance and support on her husband's credit and at his expense, when he fails to make proper provision for her necessities. Bostwick v. Brower, 49 N.Y.S. 1046, 22 Misc. 709.

*Deed of agency.* A revocable and voluntary trust for payment of debts. Wharton.

*Exclusive agency.* Defined as an agreement by owner that during life of contract he will not sell property to a purchaser procured by another agent, which agreement does not preclude owner himself from selling to a purchaser of his own procuring, while a contract giving a broker "exclusive sale" is more than such exclusive agency, and is an agreement by the owner that he will not sell the property during the life of the contract to any purchaser not procured by the broker in question. Harris v. McPherson, 97 Conn. 164, 115 A. 723, 724, 24 A.L.R. 1530; Harris & White v. Stone, 137 Ark. 23, 207 S.W. 443, 444.

*General agency.* That which exists when there is a delegation to do all acts connected with a particular trade, business or employment. Hinkson v. Kansas City Life Ins. Co., 93 Or. 473, 183 P. 24, 29. It implies authority on the part of the agent to act without restriction or qualification in all matters relating to the business of his principal. Schwartz v. Maryland Casualty Co., 82 N.H. 177, 131 A. 352, 353.

*Implied agency.* One created by act of parties and deduced from proof of other facts. Sigel-Campion Live Stock Commission Co. v. Ardohain, 71 Colo. 410, 207 P. 82, 83. It is an actual agency, proved by deductions or inferences from other facts, and third party need have no knowledge of the principal's acts, nor have relied on them. Kentucky-Pennsylvania Oil & Gas Corporation v. Clark, 247 Ky. 438, 57 S.W.2d 65.

*Ostensible agency.* One which exists where the principal intentionally or by want of ordinary care causes a third person to believe another to be his agent who is not really employed by him. Weidenaar v. N. Y. Life Ins. Co., 36 Mont. 592, 94 P. 1, 6. See, also, Agency by Estoppel.

AGENCY COUPLED WITH INTEREST. Interest in continued existence of power' or authority to act with reference to business, where secured by contract and based on consideration moving from agent to principal looking to exercise of power as means of reimbursement, creates "agency coupled with an interest." Bowling v. National Convoy & Trucking Co., 101 Fla. 634, 135 So. 541, 544. Agent must have an interest or estate in the thing to be disposed of or managed under the power. Eduardo Fernandez Y Compania v. Longino & Collins, 199 La. 343, 6 So.2d 137, 142, 143.

AGENCY RELATIONSHIP. An employment for purpose of representation in establishing legal relations between principal and third persons. Blabon v. Hay, 269 Mass. 401, 169 N.E. 268, 271.

AGENDA. Memoranda of things to be done, as items of business or discussion to be brought up at a meeting; a program consisting of such items. Webster. Baton Rouge Bldg. Trades Council v. T. L. James & Co., 201 La. 749, 10 So.2d 606, 619.

AGENESIA. In medical jurisprudence, impotentia generandi; sexual impotence; incapacity for reproduction, existing in either sex, and whether arising from structural or other causes.

AGENFRIDA. Sax. The true master or owner of a thing. Spelman.

AGENHINA. In Saxon law, a guest at an inn, who, having stayed 'there for three nights, was then accounted one of the family. Cowell.

AGENS. Lat. An agent, a conductor, or manager of affairs. Distinguished from *factor,* a workman. A plaintiff. Fleta, lib. 4, c. 15, § 8.

AGENT. A person authorized by another to act for him, one intrusted with another's business. Downs v. Delco-Light Co., 175 La. 242, 143 So. 227. One who represents and acts for another under the contract or relation of agency, *q.* v. Fowler v. Cobb, Mo.App., 232 S.W. 1084. A business representative, whose function is to bring about, modify, affect, accept performance of, or terminate contractual obligations between principal and third persons. Saums v. Parfet, 270 Mich. 165, 258 N.W. 235. One who undertakes to transact some business, or to manage some affair, for another, by the authority and on account of the latter, and to render an account of it. 1 Livermore, Ag. 67. See Co.Litt. 207; 1 B. & P. 316; Thomas B. Jeffrey Co. v;Lockridge, 173 Ky. 282, 190 *S.W.* 1103, 1105. One who acts for or in place of another by authority from him; a substitute, a deputy, appointed by principal with power to do the things which principal may do. Stephenson v. Golden, 279 Mich. 710, 276 N.W. 849. One who deals not only with things, as does a servant, but with persons, using his own discretion as to means, and frequently establishing contractual relations between his

principal and third persons. Rendleman v. Niagara Sprayer Co., D.C.I11., 16 F.2d 122, 124. See, also, State v. Bond, 94 W.Va. 255, 118 S.E. 276, 279.

*Agent and patient.* A phrase indicating the state of *a* person who is required to do a thing, and is at the same time the person to whom it is done ; as, when a man is indebted to another, and he appoints him his executor, required to pay the debt in his capacity of executor, and entitled to receive it in his own right. Termes de la Ley.

*Apparent agent or ostensible agent.* One whom the principal, either intentionally or by want of ordinary care, induces third persons to believe to be his agent, though he has not, either expressly or by implication, conferred authority on him. Ware v. Home Mut. Ins. Ass'n of Iowa, 135 Neb. 329, 281 N.W. 617, 620. A person who, whether or not authorized, reasonably appears to third person, because of manifestations of another, to be authorized to act as agent for such other. Hansche v. A. J. Conroy, Inc., 222 Wis. 553, 269 N.W. 309, 312.

*Diplomatic agent.* A person employed by a sovereign to manage his private affairs, or those of his subjects in his name, at the court of a foreign government. Wolff, Inst. Nat. § 1237.

*General agency business.* One not engaged as agent for single firm or person, but holding himself out to public as being engaged in business of being agent. Comer v. State Tax Commission of New Mexico, 41 N.M. 403, 69 P.2d 936.

*General agent.* One employed in his capacity as a professional man or master of an art or trade, or one to whom the principal confides his whole business or all transactions or functions of a designated class ; or he is a person who is authorized by his principal to execute all deeds, sign all contracts, or purchase all goods, required in a particular trade, business, or employment. See Story, Ag. § 17; Thompson .v. Michigan Mut. Life Ins. Co., 56 Ind.App. 502, 105 N.E. 780, 782; Little v. Minneapolis Threshing Mach. Co., 166 Iowa 651, 147 N.W. 872, 873. One empowered to transact all business of principal at any particular time or any particular place, a general manager. Abuc Trading & Sales Corporation v. Jennings, 151 Md. 392, 135 A. 166, 173. An agent to manage buildings and lease and collect the rents, Daniel v. Pappas, C.C.A.Okl., 16 F.2d 880, 883. An agent empowered to enter into contracts without consulting insurer, notwithstanding restriction of his territory, London & Lancashire Ins. Co. v. McWilliams, 215 Ala. 481, 110 So. 909, 910.

*Local agent.* One appointed to act as the representative of a corporation and transact its business generally (or business of a particular character) at a given place or within a defined district. See Frick Co. v. Wright, 23 Tex. Civ.App. 340, 55 S.W. 608; Moore v. Freeman's Nat. Bank, 92 N.C. 594.

*Managing agent.* A person who is invested with general power, involving the exercise of judgment and discretion, as distinguished from an ordinary agent or employee, who acts in an inferior capacity, and under the direction and control of superior authority, both in regard to the extent of the work and the manner of executing the same. Reddington v. Mariposa Land & Min. Co., 19 Hun, N.Y., 405; Taylor v. Granite State Prov. Ass'n, 32 N.C. 992, 136 N.Y. 343, 32 Am.St.Rep. 749. One who has exclusive supervision and control of some department of a corporation's business, the management of which requires of such person the exercise of independent judgment and discretion, and the exercise of such authority that it may be fairly gaid that service of summons upon him will result in notice to the corporation. Federal Betterment Co. v. Reeves, 73 Kan. 107, 84 P. 560, 4 L.R.A.,N.S., 460; Hatinen v. Payne, 150 Minn. 344, 185 N.W. 386, 387. As used in section 4274, Wilson's Statutes of Oklahoma 1903, Ann., an agent whose agency extends to all the transactions of the corporation within the state; one who has or is engaged in the management of the business of the corporation, in distinction from the management of a local or particular branch or department of said business. Waters Pierce Oil Co. v. Foster, 52 Okl. 412, 153 P. 169, 171.

*Mercantile agents.* Agents employed for the sale of goods or merchandise are called "mercantile agents," and are of two principal classes,—brokers and factors *(q. v.);* a factor is sometimes called a "commission agent," or "commission merchant." Russ. Mere. Ag. 1.

*Practice of the House of Lords and Privy Council.* In appeals, solicitors and other persons admitted to practice in those courts in a similar capacity to that of solicitors in ordinary courts, are technically called "agents." Macph. Priv. Coun. 65.

*Private agent.* An agent acting for an individual in his private affairs; as distinguished from a *public* agent, who represents the government in some administrative capacity.

*Public agent.* An agent of the public, the state, or the government; a person appointed to act for the public in some matter pertaining to the administration of government or the public business. See Story, Ag. § 302; Whiteside v. United States, 93 U.S. 254, 23 L.Ed. 882.

*Real-estate agent.* Any person whose business it is to sell, or offer for sale, real estate for others, or to rent houses, stores, or other buildings, or real estate, or to collect rent for others. Act July 13, 1866, c. 184, § 9, par. 25; 14 St. at Large, 118. Carstens v. McReavy, 1 Wash.St. 359, 25 P. 471.

A special agent is one employed to conduct a particular transaction or piece of business for his principal or authorized to perform a specified act. Hinkson v. Kansas City Life Ins. Co., 93 Or. 473, 183 P. 24, 29; Pettijohn v. St. Paul Fire & Marine Ins. Co., 100 Kan. 482. 164 P. 1096. 1097; Hoffman v. Marano, 71 Pa.Super.Ct. 26, 28.

AGENTES ET CONSENTIENTES PART PCENA PLECTENTUR. Acting and consenting parties are liable to the same punishment. 5 Coke, 80.

AGER. Lat. A field; land generally. A portion of land inclosed by definite boundaries. Municipality No. 2 v. Orleans Cotton Press, 18 La. 167, 36 Am.Dec. 624. In old English law, an acre *(q. v.).* Spelman.

AGGER. Lat. In the civil law, a dam, bank or mound. Cod. 9, 38; Townsh.Pl. 48.

AGGRAVATED ASSAULT. The term has no technical and definite common law meaning. In re Burns, C.C.Ark., 113 F. 987; People v. Ochotski, 115 Mich. 601, 73 N.W. 889. The term is one which is employed to describe an assault which has, in addition to the mere intent to commit it, another object which is also criminal, Brimhall v. State, 31 Ariz. 522, 255 P. 165, 53 A.L.R. 231; or to include all those species of assault which, for various reasons, have come to be regarded as more heinous than common assault, State v. Jones, 133 S.C. 167, 130 S.E. 747; or which have been made the subject of special legislative provisions, Daffan v. State, Tex.Cr.App., 21 S.W.2d 301 and Njecick v. State, 178 Wis. 94, 189 N.W. 147.

An assault where the means or instrument used to accomplish the injury is highly dangerous or where assailant has some ulterior and malicious motive in committing assault other than a mere desire to punish injured person. Strickbine v. State, 201 Ark. 1031, 148 S.W.2d 180, 181, 182 ; when committed with a deadly weapon under circumstances not amounting to an intent to murder, Myers v. State, 72 Tex.Cr.R. 630, 163 S. W. 432 ; or when the instrument or means used is such as inflicts disgrace upon the person assaulted, Cirul v. State, 83 Tex.Cr.R. 8, 200 S.W. 1088; Scott v. State, 73 Tex.Cr.R. 622, 166 S. W. 729, 730 (indecent and improper fondling of the person). In Arizona, aggravated assault is different from simple assault only by infliction of serious bodily injury, Brimhall v. State, 31 Ariz. 522, 255 P. 165, 166, 53 A.L.R. 231.

AGGRAVATING. Passenger ejected from plane. Delta Air Corporation v. Porter, 70 Ga.App. 152, 27 S.E.2d 758, 762.

AGGRAVATION. Any circumstance attending the commission of a crime or tort which increases its guilt or enormity or adds to its injurious consequences, but which is above and beyond the essential constituents of the crime or tort itself.

Matter of aggravation, correctly understood, does not consist in acts of the same kind and description as those constituting the gist of the action, but in something done by the defendant, on the occasion of committing the trespass, which is, to some extent, of a different legal character from the principal act complained of. Hathaway v. Rice, 19 Vt. 107. So on an indictment for murder the prisoner may be convicted of manslaughter, for the averment of malice aforethought *is* merely matter of aggravation. Co.Litt. 282 a.

In pleading, the introduction of matter into the declaration which tends to increase the amount of damages, but does not affect the right of action itself. Steph.P1. 257; 12 Mod. 597.

AGGRAVATION OF THE DISABILITY. Refers to the course or progress of the workman's condition resulting from the specific injury for which an award or arrangement of compensation has been made. Keefer v. State Industrial Accident Commission, 171 Or. 405, 135 P.2d 806, 809.

AGGREGATE. Entire number, sum, mass, or quantity of something; amount; complete whole, and one provision under will may be the aggregate if there are no more units to fall into that class. In re Curley's Will, 151 Misc. 664, 272 N. Y.S. 489. Composed of several; consisting of many persons united together; a combined whole. 1 Bl.Comm. 469.

AGGREGATE CORPORATION. See Corporation.

AGGREGATES. Name for materials consisting largely of rock, gravel and sand used for construction and surfacing of highways or, as a component part, in forming concrete for such construction. Pioneer Gravel Equipment Mfg. Co. v. Diamond Iron Works, C.C.A.Minn., 72 F.2d 161.

AGGREGATIO MENTIUM. The meeting of minds. The moment when a contract is complete. A supposed derivation of the word "agreement," *q. v.*

AGGREGATION. In law of patents, it means that the elements of a claimed combination are incapable of co-operation to produce a unitary result, and in its true sense does not need prior art patents to support it. National Popsicle Corporation v. Harvey, D.C.Pa., 6 F.Supp. 784, 786.

It does not imply mechanical interaction of parts, but only union of all elements of invention to realize single purpose. Simplex Piston Ring Co. of America v. Horton-Gallo-Creamer Co., C.C.A.Conn., 61 F.2d 748, 750. A combination which merely brings together two or more functions to be availed of independently of each other does not represent "invention" but constitutes mere "aggregation.", Hemming v. S. S. Kresge Co., D.C.Conn., 24 F.Supp. 981, 983. The assembly of old elements, in a device in which each performs the same function in the same way as it did when used alone, without mutuality of action, interaction, or co-operation, is mere "aggregation" not involving invention. In re Smith, 57 App.D.C. 204, 19 F.2d 678, 679.

AGGRESSOR. One who first employs hostile force. Penn v. Henderson, 174 Or. 1, 146 P.2d "160, 766. The party who first offers violence or offense. He who begins a quarrel or dispute, ei ther by threatening or striking another. See Wilkie v. State, 33 Okl.Cr. 225, 242 P. 1057, 1059.

AGGRIEVED. Having suffered loss or injury; damnified; injured.

AGGRIEVED PARTY. One whose legal right is invaded by an act complained of, or whose pecuniary interest is directly affected by a decree or judgment. Glos v. People, 259 Ill. 332, 102 N.E. 763, 766, Ann.Cas.1914C, 119. See next topic. One whose right of property may be established or divested. McFarland v. Pierce, 151 Ind. 546, 45 N.E. 706. The word "aggrieved" refers to a substantial grievance, a denial of some personal or property right, or the imposition upon a party of a burden or obligation. Roullard v. McSoley, 54 R.I. 232, 172 A. 326, 327. Injured in a legal sense. In re Donnelly's Estate, 55 S.D. 426, 226 N.W. 563, 565.

Adoption, Appeal of Cummings, 126 Me. 111, 136 A. 662, 663; disbarment, State v. Hunter, 152 Tenn. 233, 276 S. W. 639, 640; bar association, State v. Huddleston, 173 Ark. 686, 293 S.W. 353, 358; *contra*, disciplinary proceedings; In re Dolphin, 240 N.Y. 89, 147 N.E. 538, 539; lunacy inquisition, Commonwealth v. Davidson, 269 Pa. 218, 112 A. 115. One 'against whom error has been committed, Kinealy v. Macklin, 67 Mo. 95. Or one against whom an appealable order or judgment has been entered. Ely v. Frisbie, 17 Cal. 260. Any party having an interest recognized by law in the subject-matter, which interest is injuriously affected by judgment. Hornbeck v. Richards, 80 Mont. 27, 257 P. 1025, 1026. A complainant who has received less than the relief demanded, or a defendant who has not been accorded the full amount of his set-off or counterclaim. Blanchard v. Neill, 83 N.J.Eq. 446, 91 A. 811. See, also, Kondas v. Washoe County Bank, 50 Nev. 181, 254 P. 1080, 1081. One under necessity of answering or replying to irrelevant and redundant matter in a pleading. Shea v. Kiely, Sup., 167 N.Y.S. 570, 572.

AGILD. In Saxon law, free from penalty, not subject to the payment of *gild,* or *weregild;* that is, the customary fine or pecuniary compensation for an offense. Spelman; Cowell.

AGILER. In Saxon law, an observer or informer.

AGILLARIUS. L. Lat. In old English law, a hayward, herdward, or keeper of the herd of cattle in a common field. Cowell.

AGIO. In commercial law, a term used to express the difference in point of value between metallic and paper money, or between one sort of metallic money and another. McCul.Dict.

An Italian word for accommodation.

AGIOTAGE. A speculation on the rise and fall of the public debt of states, or the public funds. The speculator is called *"agioteur."*

AGIST. In ancient law it meant to take in and give feed to the cattle of strangers in the king's forest, and to collect the money due for the same to the king's use. Spelman; Cowell.

In modern law it means to take in cattle to feed, or pasture, at a certain rate of compensation. Bank of Tehama County v. Federal Realty Co., 2 Cal.2d 333, 40 P.2d 507, 509. See Agistment.

AGISTATIO ANIMALIUM IN FORESTA. The drift or numbering of cattle in the forest.

AGISTER. See Agistor.

AGISTERS, or GIST TAKERS. Officers appointed to look after cattle, etc. See Williams, Common, 232.

AGISTMENT. The taking and feeding of other men's cattle in the king's forest, or on one's own land, at a certain rate. Bank of Tehama County v. Federal Realty Co., 2 Cal.2d 333, 40 P.2d 507, 509. Also the profit or recompense for such pasturing of cattle. Williams v. Miller, 68 Cal. 290, 9 Pac. 166. A species of bailment. Patchen-Wilkes Stock Farm Co. v. Walton, 166 Ky. 705, 179 S.W. 823.

*In canon* law it is a composition or mean rate at which some right or due might be reckoned.

There is also agistment of *sea-banks,* where lands are charged with a tribute to keep out the sea; and *terra agistatce* are lands whose owners must keep up the sea-banks. Holthouse.

*Tithe of Agistment* was a small tithe paid to the rector or vicar on cattle or other produce of grass lands. It was paid by the occupier of the land and not by the person who put in his cattle to graze. Rawle, Exmoor 31.

AGISTOR. One who takes in horses or other animals to pasture at certain rates. Story, Bailm. § 443; Cox v. Chase, 99 Kan. 740, 163 P. 184, 186. An officer who had the charge of cattle pastured for a certain stipulated sum in the king's forest and who collected the money paid for them.

AGITATOR. One who stirs up; excites; ruffles; perturbs. One who incessant advocates a social change.

*Labor agitator.* One actively engaged in promoting the interests of the laboring men. The term does not imply the use of unlawful or improper means. Wabash R. Co. v. Young, 69 N.E. 1003, 1005, 1006, 162 Ind. 102, 4 L.R.A., N.S., 1091.

*Seditious agitator.* A disturber of the public peace, a subverter of just laws, and a bad citizen. Wilkes v. Shields, 64 N.W. 921, 62 Minn. 426, 427.

AGNATES. In the law of descents, relations by the father, or on the father's side. This word is used in the Scotch law, and by some writers as an English word, cqrresponding with the Latin *agnati, (q.* v.) Ersk.Inst. b. 1, tit. 7, § 4.

AGNATI. In Roman law, the term included all the cognates who trace their connection exclusively through males.

A table of *cognates* is formed by taking each lineal ancestor in turn and including all his descendants of both sexes in the tabular view. If, then, in tracing the various branches of such a genealogical table or tree, we stop whenever we come to the name of a female, and pursue that particular branch or ramification no further, all who remain after the descendants of women have been excluded are *agnates,* and their connection together *is* agnatic relationship. Maine, Anc. Law, 142.

All persons are agnatically connected together who are under the same *patria potestas,* or who have been under it, or who might have been under it if their lineal ancestor had lived long enough to exercise his empire. Maine, Anc. Law, 144.

The *agnate family* consisted of all persons living at the same time, who would have been subject to the patris *potestas* of a common ancestor, if his life had been continued to their time. Hadl.Rom.Law, 131.

*Cognates* were all persons who could trace their blood to a single ancestor or ancestress, and agnates were those cognates who traced their connection exclusively through males. Maine, Anc. Law. Between *agnati* and *cognati* there is this difference : that, under the name of agnati, *cognati* are included, but not 6 *converso;* for instance, a father's brother, that is, a paternal uncle, is both *agnatus* and *cognatus,* but a mother's brother, that is, a maternal uncle, is a *cognatus* but not *agnatus.* (Dig. 38, 7, 5, pr.) Burrill.

AGNATIC. [From *agnati, q.* v.] Derived from or through males. 2 Bl.Comm. 236.

AGNATIO. In the civil law, relationship on the fathers' side; the relationship of *agnati;* agnation. *Agnatio a patre est.* Inst. 3, 5, 4; Id. 3, 6, 6.

AGNATION. Kinship by the father's side. See Agnates; Agnati.

AGNOMEN, Lat. An additional name or title; a nickname. A name or title which a man gets by some action or peculiarity; the last of the four names sometimes given a Roman. Thus, Scipio *Africanus,* (the African,) from his African victories. Ainsworth; Calvinus, Lex. See Nomen.

AGNOMINATION. A surname; an additional name or title; agnomen.

AGNUS DEL Lat. Lamb of God. A piece of white wax, in a flat, oval form, like a small cake, stamped with the figure of a lamb, and consecrated by the pope. Cowell.

AGONY. Violent physical pain or mental distress. City of Chicago v. McLean, 133 Ill. 148, 24 N.E. 527, 8 L.R.A. 765.

AGRAPHIA. See Aphasia.

AGRARIAN. Relating to land, or to a division or distribution of land; as an agrarian law.

AGRARIAN LAWS. In Roman law, laws for the distribution among the people, by public authority, of the lands constituting the public domain, usually territory conquered from an enemy.

In common parlance the term is frequently applied to laws which have for their object the more equal division or distribution of landed property; laws for subdividing large properties and increasing the number of landholders.

AGRARIUM. A tax upon or tribute payable out of land.

AGREAMENTUM. In old English law, agreement; an agreement. Spelman.

AGREE. To concur; come into harmony; give mutual assent; unite in mental action; exchange promises; make an agreement; arrange; to settle. Mickleson v. Gypsy Oil Co., 110 Okl. 117, 238 P. 194, 198. Consent. Smith v. Jones, 185 Ga. 236, 194 S.E. 556, 560. Harmonize or reconcile. "You will *agree* your books." 8 Coke, 67. Concur or acquiesce in; approve or adopt. *Agreed, agreed*

to, are frequently used in the books, (like *accord,)* to show the concurrence or harmony of cases. *Agreed per curiam* is a common expression. Usually implies some contractual undertaking. In re Gray's Estate, 160 Misc. 710, 290 N.Y.S. 603, 605. To grant or covenant, as when a grantor agrees that no building shall be erected on an adjoining lot; Hogan v. Barry, 143 Mass. 538, 10 N. E. 253; or a mortgagor agrees to cause all taxes to be paid; Mackay v. Truchon, 171 Mo.App. 42, 153 S.W. 502, 503.

AGREt. In French law, a person authorized to represent a litigant before the Tribunals of Commerce. If such person be a lawyer, he is called an *avocat-agree.* Coxe, Manual of French Law.

AGREEANCE. In Scotch law, agreement; an agreement or contract.

AGREED. Settled or established by agreement.

This word in a deed creates a covenant.

It is a technical term, synonymous with "contracted," McKisick v. McKisick, Meigs Tenn. 433. It means, *ex vi termini,* that it is the agreement of both parties. Aikin v. Albany, V. & C. R. Co., 26 Barb.N.Y. 298.

AGREED CASE. Stipulations signed by litigants' attorneys, constituted an "agreed case". In re Davis Bros. Stone Co., 245 Wis. 130, 13 N.W.2d 512, 515.

Evidence presented by stipulation that stated facts constituted entire evidence is not an "agreed case". Struble-Werneke Motor Co. v. Metropolitan Securities Corporation, 93 Ind.App. 416, 178 N.E. 460, 462. Nor is an agreed statement of facts on which a case is submitted in lieu of evidence. Byers v. Essex Inv. Co., 281 Mo. 375, 219 S. W. 570, 571; Reddick v. Board of Com'rs of Pulaski County, 14 Ind.App. 598, 41 N.E. 834.

AGREED ORDER. The only difference between an agreed order and one which is made in the due course of the proceedings in an action is that in the one case it is agreed to, and in the other it is made as authorized by law. Claflin v. Gibson, 21 Ky.Law Rep. 337, 51 S.W. 439.

AGREED STATEMENT OF FACTS. A statement of facts, agreed on by the parties as true and correct, to be submitted to a court for a ruling on the law of the case. United States Trust Co. v. New Mexico, 183 U.S. 535, 22 Sup.Ct. 172, 46 L.Ed. 315. See Case Stated.

Where testimony was contradictory, stipulation relating to testimony did not constitute an "agreed state of facts". McPherson v. State Industrial Accident Commission, 169 Or. 190, 127 P.2d 344, 346.

AGREEMENT. A coming or knitting together of minds; a corning together in opinion or determination; the coming together in accord of two minds on a given proposition; in law a concord of understanding and intention between two or more parties with respect to the effect upon their relative rights and duties, of certain past or future facts or performances; the consent of two or more persons concurring respecting the transmission of some property, right, or benefits, with the view of contracting an obligation, a mutual obligation. Bac.Abr.; 'Rocha v. Hulen, 6 Cal.App.2d 245, 44 P.2d 478, 482.

The act of two or more persons, who unite in expressing a mutual and common purpose, with the view of altering their rights and obligations. The union of two or more minds in a thing done or to be done; a mutual assent to do a thing. Corn. Dig. "Agreement," A 1. See Aggregatio Mentium. Carter v. Prairie Oil & Gas Co., 58 Okl. 365, 160 P. 319, 322. A compact between parties who are thereby subjected to the obligation or to whom the contemplated right is thereby secured. People v. Mills, 160 Misc. 730, 290 N.Y.S. 48, 52.

Although often used as synonymous with "contract," Douglass v. W. L. Williams Art Co., 143 Ga. 846, 85 S.E. 993, it is a wider term than "contract" (Anson, Cont. 4.) An agreement might not be a contract, because not fulfilling some requirement. And each of a series of mutual stipulations or constituent clauses in a contract might be denominated an "agreement." The meaning of the contracting parties is their agreement. Whitney v. Wyman, 101 U.S. 396, 25 L.Ed. 1050. *"Agreement" is* seldom applied to specialties. Pars.Cont. 6.

"Agreement" is not synonymous with "promise" or "undertaking." It signifies a mutual contract, on consideration. Andrews v. Pontue, 24 Wend.N.Y. 285; Wain v. Warlters, 5 East, 10; wherein parties must have a distinct intention common to both, and without doubt or difference. Blake v. Mosher, 11 Cal.App.2d 532, 54 P.2d 492, 494.

The writing or instrument which is evidence of an agreement.

Classification

*Conditional agreements,* the operation and effect of which depend upon the existence of a supposed state of facts, or the performance of a condition, or the happening of a contingency.

*Executed agreements,* which have reference to past events, or which are at once closed and *where* nothing further remains to be done by the parties.

*Executory agreements* are such as are to be performed in the future. They are commonly preliminary to other more formal or important contracts or deeds, and are usually evidenced by memoranda, parol promises, etc.

*Express agreements* are those in which the terms and stipulations are specifically declared and avowed by the parties at the time of making the agreement.

*Implied agreement.* (1) Implied in fact. One inferred from the acts or conduct of the parties, instead of being expressed by them in written or spoken words. Baltimore Mail S. S. Co. v. U. S., C.C.A.Md., 76 F.2d 582, 585. (2) Implied in law; more aptly termed a constructive or quasi contract. One where, by fiction of law, a promise is imputed to perform a legal duty, as to repay money obtained by fraud or duress. Baltimore Mail S. *S.* Co. *v.* U. S., C.C.A.Md., 76 F.2d 582, 585. One inferred by the law where the conduct of the parties with reference to the subject-matter is such as to induce the belief that they intended to do that which their acts indicate they have done. Baltimore & 0. R. Co. *v.* U. S., 261 U.S. 592, 43 S.Ct. 425, 67 L.Ed. 816; Cuneo v. De Cuneo, 24 Tex.Civ.App. 436, 59 S.W. 284.

*Parol agreements.* Such as are either by word of mouth or are committed to writing, but are not under seal. The common law draws only one great line, between things under seal and not under seal. Wharton.

*In agreement* means in conformity, or harmony' with. Brown Real Estate Co. v. Lancaster County, 110 Neb. 665, 194 N.W. 897, 898.

AGREEMENT FOR INSURANCE. An agreement often made in short terms preliminary to the filling out and delivery of a policy with specific stipulations.

AGREEMENT NOT TO BE PERFORMED WITHIN A YEAR. An agreement that necessarily must require more than year for performance. Marble

v. Town of Clinton, Mass., 9 N.E.2d 522, 524, 111 A.L.R. 1101. Incapable of performance within one year. Street v. Maddux, Marshall, Moss & Mallory, 58 App.D.C. 42, 24 F.2d 617, 619.

AGREEMENT OF SALE; AGREEMENT TO SELL. An agreement of sale may imply not merely an obligation to sell, but an obligation on the part of the other party to purchase (cf. Loud v. St. Louis Union Trust Co., 313 Mo. 552, 281 S.W. 744, 755) while an agreement to sell is simply an obligation on the part of the vendor or promisor to complete his promise of sale; Treat v. White, 181 U.S. 264, 21 Sup.Ct. 611, 45 L.Ed. 853. It is a contract to be performed in future, and, if fulfilled, results in a sale; it is preliminary to sale and is not the sale. Callender v. Crossfield Oil Syndicate, 84 Mont. 263, 275 P. 273, 276.

AGREEMENT TO SELL LAND. A contract to be performed in future which if fulfilled results in sale. In re Frayser's Estate, 401 Ill. 364, 82 N.E. 2d 633, 638.

AGREER. Fr. In French marine law, to rig or equip a vessel. Ord. Mar. liv. 1, tit. 2, art. 1.

AGREZ. Fr. In French marine law, the rigging or tackle of a vessel. Ord. Mar. liv. 1, tit. 2, art. 1; Id. tit. 11, art. 2; Id. liv. 3, tit. 1, art. 11.

AGRI. Arable lands in common fields.

AGRI LIMITATI.

*In Roman law,* lands belonging to the state by right of conquest, and granted or sold in plots. Sandars, Just.Inst., 5th Ed., 98.

*In modern civil law,* lands whose boundaries are strictly limited by the lines of government surveys. Hardin v. Jordan, 140 U.S. 371, 11 Sup. Ct. 808, 35 L.Ed. 428.

AGRICULTURAL. Pertaining to, or dealing with, agriculture; also, characterized by or engaged in farming as the leading pursuit. Oak Woods Cemetery *Ass'n v.* Murphy, 383 Ill. 301, 50 N.E.2d 582, 587.

AGRICULTURAL CHEMISTRY. A study of products of the soil, especially foods, their nutritive value, their intensive production, study of composition of soil, chemical methods of fertilization, prevention or amelioration of plant diseases, extinction of insects and other detriments to agriculture, and in general study of animal and plant life with relation to the science of chemistry. In re Frasch's Estate, 125 Misc.Rep. 381, 211 N.Y.S. 635, 638.

AGRICULTURAL COMMODITIES. Generally synonymous with agricultural or farm products, and not including agricultural implements, Bowles v. Rock, D.C.Neb., 55 F.Supp. 865, 868; or commercial fertilizer and ground and crushed limestone, Stiver v. Holley, 215 Ind. 9, 17 N.E.2d 831, 832.

AGRICULTURAL EMPLOYMENT. Farm labor synonymous, and includes all farm work and work incidental thereto. Smythe v. Phoenix, 63 Idaho 585, 123 P.2d 1010, 1012.

AGRICULTURAL HOLDING. Land cultivated for profit in some way. Within the meaning of the English Agricultural Holdings act of 1883, the term will not include natural grass lands. Such lands are pastoral holdings. 32 S.J. 630.

AGRICULTURAL LABOR. Services performed on farm, for owner or tenant. California Employment Commission v. Butte County Rice Growers Ass'n, Cal., 154 P.2d 892, 894. Broader in meaning than farming or farm labor and includes one engaged in horticulture. St. Louis Rose Co. v. Unemployment Compensation Commission, 348 Mo. 1153, 159 S.W.2d 249, 250, and maintenance work and similar service in employer's farm packing house. Latimer v. United States, D.C.Cal., 52 F.Supp. 228, 234, 235, 236, 237. The science and art of production of plants and animals useful to man. Murphy v. Mid-West Mushroom Co., 350 Mo. 658, 168 S.W.2d 75, 77, 78.

AGRICULTURAL LANDS. A term used merely to distinguish rural from urban or other properties. Eisenzimmer v. Bell, 75 N.D. 733, 32 N.W. 2d 891, 893.

Land may be assessable as "agricultural land" though it be covered by native timber and underbrush, grass, and weeds. Milne v. McKinnon, 32 S.D. 627, 144 N.W. 117, 118. The term is synonymous with land "agricultural in character." State v. Stewart, 58 Mont. 1, 190 P. 129, 131.

AGRICULTURAL LIEN. A statutory lien in some states to secure money or supplies advanced to an agriculturist to be expended or employed in the making of a crop and attaching to that crop only. Jones-Phillips Co. v. McCormick, 174 N.C. 82, 93 S.E. 449, 452.

AGRICULTURAL PRODUCT. Things which have a situs of their production upon the farm and which are brought into condition for uses of society by labor of those engaged in agricultural pursuits as contradistinguished from manufacturing or other industrial pursuits. In re Rodgers, Neb., 134 Neb. 832, 279 N.W. 800, 803.

That which is the direct result of husbandry and the cultivation of the soil. The product in its natural unmanufactured condition. Getty v. Milling Co., 40 Kan. 281, 19 P. 617. It has been held not to include beef cattle; Davis & Co. v. City of Macon, 64 Ga. 128, 37 Am.Rep. 60; but to include forestry products; Northern Cedar Co. v. French, 131 Wash. 394, 230 P. 837, 846.

AGRICULTURAL PURSUITS. Every process and step taken and necessary to the completion of a finished farm product. Big Wood Canal Co. v. Unemployment Compensation Division of Industrial Accident Board, 61 Idaho 247, 100 P.2d 49, 51.

AGRICULTURAL SOCIETY. One for promoting agricultural interests, such as improvement of land, implements, and brands of cattle. Crete Mills v. Nebraska State Board of Agriculture, 132 Neb. 244, 271 N.W. 684, 688; or for giving agricultural fairs; Town of West Hartford v. Connecticut Fair Ass'n, 88 Conn. 627, 92 A. 432.

AGRICULTURAL WORKER. Tasks incidental to agricultural activities all are within the scope of the employment of an "agricultural worker." Melendez v. Johns, Ariz., 76 P.2d 1163, 1167.

AGRICULTURE. The art or science of cultivating the ground, including the harvesting of crops, and in a broad sense, the science or art of production of plants and animals useful to man, including in a variable degree, the preparation of these products for man's use. In the broad sense, it includes farming, horticulture, forestry, together with such subjects as butter, cheese, making sugar, etc. Sancho v. Bowie, C.C.A.Puerto Rico, 93 F.2d 323, 324.

The cultivation of soil for food products or any other useful or valuable growths of the field or garden tillage, husbandry; also, by extension, farming, including any industry practiced by a cultivator of the soil in connection with such cultivation, as breeding and rearing of stock, dairying, etc. The science that treats of the cultivation of the soil. Stand. Diet. ; State v. Stewart, 58 Mont. 1, 190 P. 129, 131

"Agriculture" refers to the field or farm with all its wants, appointments, and products, as distinguished from "horticulture," which refers to the garden, with its less important though varied products. Dillard v. Webb, 55 Ala. 468.

AGUSADURA. In ancient customs, a fee, due from the vassals to their lord for sharpening their plowing tackle.

AHTEID. In old European law, a kind of oath among the Bavarians. Spelman. In Saxon law. One bound by oath, *q. d.* "oathtied." From *ath,* oath, and *tied.* Id.

AID. To support, help, assist, or strengthen. Hines v. State, 16 Ga.App. 411, 85 S.E. 452, 454. Act in cooperation with. Cornett v. Commonwealth, 198 Ky. 236, 248 S.W. 540, 542.

Supplement the efforts of another. Anderson v. Board of Medical Examiners, 117 Cal.App. 113, 3 P.2d 344, 346.

A person "aids" when being present at the time and place he does some act to render aid to the actual perpetration of the crime, though he takes no direct share in its commission. State v. Johnson, 220 N.C. 773, 18 S.E.2d 358, 360.

This word must be distinguished from its synonym "encourage," the difference being that the former connotes active support and assistance. Although it may not import necessary criminality in the act furthered. See Abet.

AID AND ABET. Help, assist, or facilitate the commission of a crime, promote the accomplishment thereof, help in advancing or bringing it about, or encourage, counsel, or incite as to its commission. State v. Lord, 42 N.M. 638, 84 P.2d 80, 86.

Implies knowledge. Winning v. Board of Dental Examiners, 114 Cal.App. 658, 300 P. 866, 868.

At common law it consisted in being present at the time and place, and doing some act to render aid to the actual perpetrator of the crime, though without taking a direct share in its commission. See 4 Bl.Comm. 34; State v. Tally, 102 Ala. 25, 15 So. 722.

It comprehends all assistance rendered by words, acts, encouragement, support, or presence, actual or constructive, to render assistance if necessary. Johnson v. State, 21 Ala.App. 565, 110 So. 55; State v. Davis, 191 Iowa, 720, 183 N.W. 314, 316. But it is not sufficient that there is a mere negative acquiescence not in any way made known to the principal malefactor. People v. Barnes, 311 Ill. 559, 143 N.E. 445, 447. See Accessory; Abettor; Alder and Abettor.

AID AND ASSIST. The words "aided and assisted," as used in the statute prohibiting the sale of intoxicating liquors, as regards the condemnation or confiscation of vehicles, implies either knowledge on the part of the owner that the vehicle was being used for unlawful transportation, or such negligence or want of care as to charge him with such knowledge or notice. In re Gattina, 203 Ala. 517, 84 So. 760.

AID AND COMFORT. Help; support; assistance; counsel; encouragement.

As an element in the crime of treason (see Constitution of the United States, art. 3, § 3), the giving of "aid and comfort" to the enemy may consist in a mere attempt. It is not essential to constitute the giving of aid and comfort that the enterprise commenced should be successful and actually render assistance. Young v. United States, 97 U.S. 39, 62, 24 L.Ed. 992. An act which intentionally strengthens or tends to strengthen enemies of the United States, or which weakens or tends to weaken power of the United States to resist and attack such enemies. United States v. Haupt, D.C.Ill., 47 F.Supp. 836, 839. Any intentional act furthering hostile designs of enemies of the United States. United States v. Haupt, D.C.Ill., 47 F.Supp. 836, 839.

AID BOND, See Bond.

AID OF THE KING. The king's tenant prays this, when rent is demanded of him by others.

AID PRAYER. In English practice, a proceeding formerly made use of, by way of petition in court, praying in aid of the tenant for life, etc., from the reversioner or remainderman, when the title to the inheritance was in question. It was a plea in suspension of the action. 3 Bl.Comm. 300.

AID SOCIETIES. See Benefit Societies.

AIDER. One who is actually or constructively present at the commission of the offense and is a "principal". State v. Bachmeyer, 247 Wis. 294, 19 N.W.2d 261, 263.

Mere proof of a defendant's presence at the time of the commission of a criminal act is not sufficient to render him an "alder". Gentry v. State, 65 Ga.App. 100, 15 S.E. 2d 464, 465.

AIDER AND ABETTOR. One who assists another in the accomplishment of a common design or purpose; he must be aware of, and consent to, such design or purpose. Peats v. State, 213 Ind. 560, 12 N.E.2d 270, 277.

One who advises, counsels, procures, or encourages another to commit a crime, himself being guilty of some overt act or advocacy or encouragement of his principal, actually or constructively present when crime is committed, and participating in commission thereof by some act, deed, word, or gesture, Turner v. Commonwealth, 268 Ky. 311, 104 S.W.2d 1085, and sharing the criminal intent of the principal. State v. Reedy, 97 W.Va. 549, 127 S.E. 24, 28. But one who incites or instigates the commission of a felony when he is neither actually nor constructively present is an "alder, abettor, or procurer" within the meaning of a statute. Neal v. State, 104 Neb. 56, 175 N.W. 669, 670.

AIDER BY VERDICT. The healing or remission, by a verdict rendered, of a defect or error in pleading which might have been objected to before verdict.

The presumption of the proof of all facts necessary to the verdict as it stands, coming to the aid of a record in which such facts are not distinctly alleged.

AIDING AN ESCAPE. Any overt act, intended and useful to assist attempted or completed departure of prisoner from lawful custody before his discharge by due process of law. State v. Navarro, 131 Me. 345, 163 A. 103, 104.

AIDS. In feudal law, originally mere benevolences granted by a tenant to his lord, in times of distress; but at length the lords claimed them as of right.

They were principally three : (1) To ransom the lord's person, if taken prisoner ; (2) to make the lord's eldest son and heir apparent a knight; (3) to give a suitable portion to the lord's eldest daughter on her marriage. Abolished by 12 Car. II, c. 24.

Also, extraordinary grants to the crown by the house of commons, which were the origin of the modern system of taxation. 2 Bl.Comm. 63, 64.

A *reasonable aid* was a duty claimed by the lord of the fee of his tenants, holding by knight service, to marry his daughter, etc. Cowell.

AIEL (spelled also *Ayel, Aile, Ayle,* and *Aieul).* L. Fr. A grandfather.

A writ which lieth where the grandfather was seized in his demesne as of fee of any lands or tenements in fee simple the day that he died, and a stranger abateth or entereth the same day and dispossesseth the heir. Fitzh.Nat.Brev. 222; Termes de la Ley; 3 Bla.Com. 186; 2 Poll. & Maitl. 57. See Abatement of Freehold.

AIELESSE. A Norman French term signifying "grandmother." Kelham.

AILE. A corruption of the French word *aieul,* grandfather. See Aiel.

AILMENT. Commonly means indisposition of body or mind, a slight illness. Mutual Life Ins. Co. of New York v. Burton, 167 Tenn. 606, 72 S. W.2d 778, 781.

But within meaning of an application for a benefit certificate, it is something which substantially impairs the health of the applicant, materially weakens the vigor of his constitution, or seriously deranges his vital functions, thereby excluding chronic rheumatism. National Americans v. Ritch, 121 Ark. 185, 180 S.W. 488, 489. And in life insurance application does not include mere temporary indisposition, which, though requiring medical treatment, is readily remediable. Zogg v. Bankers' Life Co. of Des Moines, Iowa, C.C.A.W.Va., 62 F.2d 575, 578. Nor passing discomfort. Washington Fidelity Nat. Ins. Co. v. Lacey, 45 Ohio App. 104, 186 N.E. 751, 754. However, it covers disorders which could not properly be called diseases. Cromeens v. Sovereign Camp W. O. W., Mo.App., 247 S.W. 1033, 1034.

AIM A WEAPON. To point it intentionally. Edwards v. State, 28 Ga.App. 466, 111 S.E. 748. "Aim" denotes direction toward some minute point in an object, while "point" implies direction toward the whole object. Buchanan v. State, 25 Okl.Cr. 198, 219 P. 420, 423.

AINESSE. In French feudal law, the right or privilege of the eldest born; primogeniture; esnecy. Guyot, Inst.Feud. c. 17.

AIR. That fluid transparent substance which surrounds our globe. Bank v. Kennett, 101 Mo.App. 370, 74 S.W. 474.

AIR BASE. See Base.

AIR CONDITION. To render a room, building, office, hotel or the like reasonably comfortable by circulating air which is maintained at a predetermined temperature by either warming or cooling it. Magee Laundry & Cleaners v. Harwell Appliance Co., 184 Miss. 435, 185 So. 571, 572.

AIR COURSES. As applied to the operation of coal mines, passages for conducting air. Ricardo v. Central Coal & Coke Co., 100 Kan. 95, 163 P. 641, M3. See Airway.

AIRCRAFT. Any contrivance used, or designed for navigation of or flight in the air, except a parachute or other contrivance designed for such navigation but used primarily as safety equipment. 49 U.S.C.A. §§ 171-184.

As defined in the Uniform Aeronautics Act, the term includes balloon, airplane, hydroplane and every other vehicle used for navigation through the air. See Aeronautics; Airship; Hydro-Aeroplane.

AIRE. In old Scotch law, the court of the justices itinerant, corresponding with the English *eyre, (q.* v.) Skene de Verb. Sign. voc. *Iter.*

AIRPLANE. See Aeronautics; Hydro-Aeroplane; Aircraft; Airship.

AIRPORT. Landing and taking off place for air planes. City of Mobile v. Lartigue, 23 Ala.App. 479, 127 So. 257, 260.

With its beacons, landing fields, runways, and hangars, it is analogous to a harbor with its lights, wharves, and docks; the one is the landing place and haven of ships that navigate the water, the other of those that navigate the air. Coleman v. City of Oakland, 110 Cal.App. 715, 295 P. 59, 61. And includes all land, buildings, structures or other improvements, necessary or convenient in the establishment and operation of an airport. Moore v. Gordon, Tex.Civ.App., 122 S.W.2d 239, 242.

Any locality either of water or land which is adapted for the landing and taking off of aircraft and which provides facilities for shelter, supply, and repair of aircraft, or a place used regularly for receiving or discharging passengers or cargo by air. 49 U.S.C.A. §§ 171-184. City of Wichita v. Clapp, 125 Kan. 100, 263 P. 12, 63 A.L.R. 478.

AIRSHIP. Under some statutes it includes every kind of vehicle or structure intended for use as a means of transporting passengers or goods, or both, in the air. As defined by the International Flying Convention of 1919, an airship means an aircraft using gas lighter than air as a means of support and having means of propulsion.

See Aeronautics; Aircraft; Hydro-Aeroplane.

AIRT AND PAIRT. In old Scotch criminal law, accessary; contriver and partner. 1 Pitc.Crim. Tr. pt. 1, p. 133; 3 How.State Tr. 601. Now written *art and part, (q. v.)*

AIRWAY. Applies to air routes for either airplanes or seaplanes and is a material or permanent way through the air laid out with precision

and care that an engineer adopts in choosing the course of and laying down a roadway. City of Wichita v. Clapp, 125 Kan. 100, 263 P. 12, 14, 63 A.L.R. 478.

In English law, a passage for the admission of air into a mine. 24 & 25 Viet. c. 97, § 28. See Air Courses.

AISIAMENTUM (spelled also *Esamentum, Aismentum).* In old English law, an easement. Spelman.

AISNE or EIGNE. In old English law, the eldest or first born.

AJOURNMENT. In French law, the document pursuant to which an action or suit is commenced, equivalent to the writ of summons in England. Actions, however, are in some cases commenced by *requéte* or petition. Arg.Fr.Merc.Law, 545.

AJUAR. In Spanish law, paraphernalia. The jewels and furniture which a wife brings in marriage.

AJUTAGE (spelled also *Adjutage).* A conical tube used in drawing water through an aperture, by the use of which the quantity of water drawn is much increased.

AKIN. In old English law. Of kin. "Next-a-kin." 7 Mod. 140.

AL. L. Fr. At the; to the. *Al barre;* at the bar. *Al huis d'esglise;* at the church door.

ALIE ECCLESL7E. The wings or side aisles of a church. Blount.

ALANERARIUS. A manager and keeper of dogs for the sport of hawking; from *alanus,* a dog known to the ancients. A falconer. Blount.

ALARM LIST. The list of persons liable to military watches, who were at the same time exempt from trainings and musters. See Prov.Laws 1775-76, c. 10, § 18; Const.Mass. c. 11, § 1, art. 10; Pub.St.Mass.1882, p. 1287.

ALBA FIRMA. In old English law, white rent; rent payable in silver or white money, as distinguished from that which was anciently paid in corn or provisions, called black mail, or black rent; *reditus nigri.* Spelman; Reg.Orig. 319b.

ALBACEA. In Spanish law, an executor or administrator; one who is charged with fulfilling and executing that which is directed by the testator in his testament or other last disposition. Emeric v. Alvarado, 64 Cal. 529, 2 Pac. 418, 433.

ALBANAGIUM. In old French law, the state of alienage; of being a foreigner or alien.

ALBANUS. In old French law, a stranger, alien, or foreigner.

ALBINATUS. In old French law, the state or condition of an alien or foreigner.

ALBINATUS JUS. In old French law, the *droit d'aubaine* in France, whereby the king, at an alien's death, was entitiea to all his property, unless he had peculiar exemption. Repealed in June, 1791.

ALBUM BREVE. A blank writ; a writ with a blank or omission in it.

ALBUS LIBER. The white book; an ancient book containing a compilation of the law and customs of the city of London.

ALCABALA. In Spanish law, a duty of a certain per cent. paid to the treasury on the sale or exchange of property.

ALCAIDE. Sp. Jailer, warden, governor of a fortress.

ALCALDE. The name of a judicial officer in Spain, and in those countries which have received their laws and institutions from Spain. His functions somewhat resembled those of mayor in small municipalities on the continent, or justice of the peace in England and most of the United States. Castillero v. U. *S.,* 2 Black, 17, 194, 17 L.Ed. 360.

ALCOHOLIC BEVERAGE. The term is distinguished from the term "intoxicating liquor," in that a beverage may be alcoholic in that it contains some alcohol, and yet not be intoxicating as defined in National Prohibition Act. Premier-Pabst Sales Co. v. McNutt, D.C.Ind., 17 F.Supp. 708, 714.

Beer. Liquor Control Commission v. McGillis, 91 Utah, 586, 65 P.2d 1136, 1141. Ethyl alcohol, within tax statute. H. 0. Hurley Co. v. Martin, 267 Ky. 182, 101 S.W.2d 657, 660. It is immaterial whether the liquor is suitable or desirable for beverage purposes, if it is prohibited by law and is in fact used as a beverage. Powell v. State, 179 Md. 399, 18 A.2d 587, 590, 591. But it must be drinkable. McChristy v. State, 138 Tex.Cr.R. 26, 133 S.W.2d 976, 977.

ALCOHOLIC LIQUORS. "Alcoholic, spirituous and malt liquors" mean intoxicating liquors which can be used as a beverage, and which, when drunk to excess, will produce intoxication. Howard v. Acme Brewing Co., 143 Ga. 1, 83 S.E. 1096, 1097, Ann. Cas.1917A, 91; F. W. Woolworth Co. v. State, 72 Okl.Cr. 125, 113 P.2d 399, 403.

The term includes raw alcohol. C. J. Lincoln Co. v. State, 122 Ark. 204, 183 S. W. 173, 174. Beer, ale, or wine in Selective Service Act, § 12 (50 U.S.C.A. § 226 note). U. S. v. Kinsel, D.C., 263 F. 141, 142. And lemon and vanilla extracts, made or used for beverage purposes, containing alcohol. Brandon v. State, 24 Ala.App. 289, 134 So. 890, 891. But not specially denatured alcohol. M. H. McCarthy & Co. v. Doran, D.C.Mass., 43 F.2d 659, 661. See Intoxicating Liquor.

ALCOHOLISM. In medical jurisprudence, the pathological effect (as distinguished from physiological effect) of excessive indulgence in intoxicating liquors.

A morbid condition resulting from the inordinate or excessive use of alcoholic beverages. Cochran *v.* Commissioner of Internal Revenue, C.C.A.4, 78 F.2d 176, 178.

It is *acute* when induced by excessive potations at one time or in the course of a single debauch. An attack of delirium tremens and alcoholic homicidal mania are examples of this form. It is *chronic* when resulting from the long-continued use of spirits in less quantities, as in the case of dipsomania.

ALCOVE ROOM. An "alcove room," within Tenement House Law N. Y. § 65, is a room with an. alcove. People on Complaint of Hickey v. Whitelow, Mag.Ct.N.Y., 166 N.Y.S. 141, 148.

ALDERMAN. A judicial or administrative magistrate.

See Aldermannus.

Originally the word was synonymous with "elder" or "senator," but was also used to designate an earl, and even a king.

*In American cities*, one of a board of municipal officers next in order to the mayor. State v. Waterman, 95 Conn. 414, 111 A. 623, 624; Board of Lights and Waterworks v. Dobbs, 151 Ga. 53, 105 S.E. 611, 612. The aldermen are generally a legislative body, having limited judicial powers as a body, as in matters of internal police regulation, laying out and repairing streets, constructing sewers, and the like; though in many cities they hold separate courts, and have magisterial powers to a considerable extent.

*In English law,* an associate to the chief civil magistrate of a corporate town or city.

The word would seem to have been rather an appellation of honor, originally, than a distinguishing mark of office. Spelmar Gloss.

ALDERMANNUS. L. Lat. An alderman.

ALDERMANNUS CIVITATIS VEL BURGI. Alderman of a city or borough, from which the modern office of alderman has been derived. T. Raym. 435, 437.

ALDERMANNUS COMITATUS. The alderman of the county. According to Spelman, he held an office intermediate between that of an earl and a sheriff. According to other authorities, he was the same as the earl. 1 Bl.Comm. 116.

ALDERMANNUS HUNDRED! SEU WAPEN• TACHIL Alderman of a hundred or wapentake. Spelman.

ALDERMANNUS REGIS. Alderman of the king. So called, either because he received his appointment from the king or because he gave the judgment of the king in the premises allotted to him.

ALDERMANNUS TOTIUS ANGLIZE. Alderman of all England. An officer among the Anglo-Saxons, supposed by Spelman to be the same with the chief justiciary of England in later times. Spelman.

ALE-CONNER. In old English law, an officer appointed by the court-leet, sworn to look to the assise and goodness of ale and beer within the precincts of the leet. Kitch. Courts, 46; Whishaw. And to look to the assise of bread. Cowell.

This officer is still continued in name, though the duties are changed or given up; 1 Crabb, Real Prop. 501.

ALE-HOUSE. A place where ale is sold to be drunk on the premises where sold.

ALE SILVER. A rent or tribute paid annually to the lord mayor of London, by those who sell ale within the liberty of the city.

ALE-STAKE. A maypole or long stake driven into the ground, with a sign on it for the sale of ale. Cowell.

ALEA. Lat. In the civil law, a game of chance or hazard. Dig. 11, 5, 1. See Cod. 3, 43. The chance of gain or loss in a contract.

ALEATOR. Lat. (From *alea, q.* v., meaning dice). In the civil law, a gamester; one who plays at games of hazard. Dig. 11, 5; Cod. 3, 43.

ALEATORY CONTRACT. A mutual agreement, of which the effects, with respect both to the advantages and losses, whether to all the parties or to some of them, depend on an uncertain event. Losecco v. Gregory, 108 La. 648, 32 So. 985.

Contracts in which promise by one party is conditioned on fortuitous event. Southern Surety Co. v. MacMillan Co., C.C.A.Okl., 58 F.2d 541, 549.

A contract, the obligation and performance of which depend upon an uncertain event, such as insurance, engagements to pay annuities, and the like.

A contract is aleatory or hazardous when the performance of that which is., one of its objects depends on an uncertain event. rt is certain when the thing to be done is supposed to depend on the will of the party, or when in the usual course of events it must happen in the manner stipulated.

ALER A DIEU. L. Fr. In old practice. To be dismissed from court; to go quit. Literally, "to go to God."

ALER SANS JOUR. In old practice, a phrase used to indicate the final dismissal of a case from court without continuance. "To go without day."

ALEU. Fr. In French feudal law, an allodial estate, as distinguished from a feudal estate or benefice.

ALFET. A cauldron into which boiling water was poured, in which a criminal plunged his arm up to the elbow, and there held it for some time, as an ordeal. Du Cange.

ALFRED'S CODE. See Dombec, Domboc.

ALGARUM MARIS. Probably a corruption of *Laganum marls, lagan* being a right, in the middle ages, like *jetsam* and *flotsam,* by which goods thrown from a vessel in distress became the property of the king, or the lord on whose shores they were stranded. Spelman; Jacob; Du Cange.

ALGO. Span. In Spanish law, property. White, Nov.Recop. b. 1, tit. 5, c. 3, § 4.

ALIA. Lat. Other things.

ALIA ENORMIA. Other wrongs. The name given to a general allegation of injuries caused by the defendant with which the plaintiff in an action of trespass under the common-law practice concluded his declaration. Archb.Crim.Pl. 694.

ALIAMENTA. A liberty of passage, open way, water-course, etc., for the tenant's accommodation. Kitchen.

ALIAS. Lat. Otherwise; equivalent of "alias dictus" or "otherwise called", indicating one was called by one or the other of two names, Corn-

monwealth v. Liebowitz, 143 Pa.Super. 75, 17 A. 2d 719, 721; at another time; in another manner; formerly.

ALIAS DICTUS. "Otherwise called." Antone v. State, 49 Ariz. 168, 65 P.2d 646, 649, (shorter and more usual form, *alias;* see Kennedy v. People, 39 N.Y. 245). Known by both those names, and is called one or the other. People v. Mellon, 171 Misc. 171, 11 N.Y.S.2d 786, 790. A fictitious name assumed by a person is colloquially termed an *"alias!"* State v. Melson, 161 La. 423, 108 So. 794, 795.

ALIAS EXECUTION. One issued after first has been- returned without having accomplished its purpose. Richards-Conover Hardware Co. v. Sharp, 150 Kan. 506, 95 P.2d 360, 364.

ALIAS SUBPOENA. One issued after the first has been returned without having accomplished its purpose. Richards-Conover Hardware Co. v. Sharp, 150 Kan. 506, 95 P.2d 360, 364.

ALIAS SUMMONS. A summons issued when original has not produced its effect because defective in form or manner of service, and when issued, which supersedes the first writ. Mansur v. Pacific Mut. Life Ins. Co. of California, 136 Mo. App. 726, 118 S.W. 1193, 1194; McGuire v. Montvale Lumber Co., 190 N.C. 806, 131 S.E. 274, 275.

ALIAS TAX WARRANT. One issued after the first has been returned without having accomplished its purpose. Richards-Conover Hardware Co. v. Sharp, 150 Kan. 506, 95 P.2d 360, 364.

ALIAS WRIT. A second writ. Ditmar v. Beckham, Tex.Civ.App., 77 S.W.2d 893, 894.

At common law "alias" as applied to an execution or fieri facias referred to new writ issued after original fieri facias was returned unproductive, but under the Code the term applies to an execution issued in lieu of a lost original. U-Driv-It System of Macon v. Lyles, 71 Ga.App. 70, 30 S.E.2d 111, 114. A writ issued where one of the same kind has already been issued in the same cause without having been effective. Schmidt v. Schmidt, 108 Mont. 246, 89 P.2d 1020, 1021. It is used of all species of writs.

Historically, the word "alias" refers to a former command of the same sort, and it was part of a Latin sentence meaning, "We command you as we have before (sicut alias) commanded you." Schmidt v. Schmidt, 108 Mont. 246, 89 P.2d 1020, 1021.

ALIAS WRIT OF EXECUTION. One issued after the first has been returned without having accomplished its purpose. Richards-Conover Hardware Co. v. Sharp, 150 Kan. 506, 95 P.2d 360, 364.

ALIBI. Lat. In criminal law, elsewhere; in another place. State v. Hubbard, 351 Mo. 143, 171 S. W.2d 701, 706.

Means that at time of commission of crime charged in indictment defendant was at different place so remote or distant or under such circumstances that he could not have committed offense. State v. Parsons, 206 Iowa 390, 220 N.W. 328, 330. It is a physical circumstance and derives its entire potency as a defense from fact that it involves the physical impossibility of guilt of accused. Gregg v. State, 69 Okl.Cr. 103, 101 P.2d 289, 296. Strictly it is not a defense though usually called such in criminal procedure. State v. Norman, 103 Ohio St. 541, 134 N.E. 474.

ALIEN. n. A foreigner; one born abroad.

A person who owes allegiance to a foreign government. De Cano v. State, 7 Wash.2d 613, 110 P.2d 627, 631, 633.

In this country is a person born out of the United States and unnaturalized under our Constitution and laws, 2 Kent, Comm. 50. Caparell v. Goodbody, 132 N.J.Eq. 559, 29 A.2d 563, 569. In England, one born out of the allegiance of the king.

A native born Filipino living in the United States but not admitted to United States citizenship was an "alien". United States v. Gancy, D.C.Minn., 54 F.Supp. 755, 758, 759. But term for immigration purposes would not apply to a Filipino seeking to enter the Territory of Hawaii or to a Filipino lawfully admitted to Hawaii who seeks entry therefrom into the United States. Id. Nor to citizens of the Philippine Islands of the Filipino race. De Cano v. State, 7 Wash.2d 613, 110 P.2d 627, 631, 633.

As to the effect of marriage on the status of women, whether they were originally aliens or citizens of the United States, see 8 U.S.C.A. §i 9-368; U. S. ex rel. Ulrich v. Kellogg, 58 App.D.C. 360, 30 F.2d 984, 985, 71 A.L.R. 1210. Petition of Peterson, D.C.Wash., 33 F.Supp. 615, 616. Johansen v. Staten Island Shipbuilding Co., 272 N.Y. 140, 5 N.E.2d 68, 70. In re Pezzi, D.C.Cal., 29 F.2c1. 999, 1001.

ALIEN or ALIENE. *v.* To transfer or make over to another; to convey or transfer the property of a thing from one person to another; to alienate. Usually applied to the transfer of lands and tenements. Co.Litt. 118; Cowell.

ALIEN AMY. In international law, alien friend. An alien who is the subject or citizen of a foreign government at peace with our own.

ALIEN AND SEDITION LAWS. Acts of congress of July 6 and July 14, 1798. See Whart. State Tr. 22.

ALIEN ENEMY. In international law, an alien who is the subject or citizen of some hostile state or power. See Dyer, 2b; Co.Litt. 129b. A person who, by reason of owing a permanent or temporary allegiance to a hostile power, becomes, in time of war, impressed with the character of an enemy. See 1 Kent, Comm. 74; 2 Id. 63; Bell v. Chapman, 10 Johns., N.Y., 183; Dorsey v. Brigham, 177 Ill. 250, 52 N.E. 303, 42 L.R.A. 809. Subjects of a foreign state at war with United States. Caparell v. Goodbody, 132 N.J.Eq. 559, 29 A.2d 563, 569.

Whether or not a person is an alien enemy depends, not on his nationality, but on the place in which he voluntarily resides or carries on business. Porter v. Freudenberg, [1915] 1 K.B. 857. See, also, Noble v. Great American Ins. Co., 194 N.Y.S. 60, 66, 200 App.Div. 773.

ALIEN FRIEND. Subjects of a foreign state at peace with the United States. Caparell v. Goodbody, 132 N.J.Eq. 559, 29 A.2d 563, 569, 570. Or citizen; an *alien* amy. Techt v. Hughes, 229 N.Y. 222, 128 N.E. 185, 186, 11 A.L.R. 166.

ALIEN NÉE. An alien born, *i. e.,* a person who, has been born an alien.

ALIENA NEGOTIA EXACTO OFFICIO GERUNTUR. The business of another is to be conducted with particular attention. Jones, Bailm. 83; First Nat. Bank of Carlisle v. Graham, 79 Pa. 118, 21_ Am.Rep. 49.

ALIENABLE. Proper to be the subject of alienation or transfer.

ALIENAGE. The condition or state of an alien.

&LIENATE. To convey; to transfer the title to property. Co.Litt. 118b. *Alien* is very commonly used in the same sense. 1 Washb. Real Prop. 53.

"Sell, *alienate,* and dispone" are the formal words of transfer in Scotch conveyances of heritable property. Bell.

The term has a technical legal meaning, and any transfer of real estate, short of a conveyance of the title, is not an alienation of the estate. Masters v. Insurance Co., 11 Barb., N.Y., 630. See, also, Nichols & Shepard Co. v. Dunnington, 118 Okl. 231, 247 P. 353, 355. But the word has been defined as to convey or transfer to another as title, property, or right, to part voluntarily with ownership of property, and, in widest sense, property is alienated when transferred from one person to another in any way; but generally alienating is restricted to transfer of title to property by act of owner, as distinguished from transfer effected entirely by operation of law. Delfelder v. Poston, 42 Wyo. 176, 293 P. 354, 361.

ALIENATIO LICET PROHIBEATUR, CONSENSU TAMEN OMNIUM, IN QUORUM FAVOREM PROHIBITA EST, POTEST FIERI, ET QUILIBET POTEST RENUNCIARE JURI PRO SE INTRODUCTO. Although alienation be prohibited, yet, by the consent of all in whose favor it is prohibited, it may take place; for it is in the power of any man to renounce a law made in his own favor. Co.Litt. 98.

ALIENATIO REI PR1EFERTUR JURI ACCRESCENDI. Alienation is favored by the law rather than accumulation. Co.Litt. 185.

ALIENATION. In real property law, the transfer of the property and possession of lands, tenements, or other things, from one person to another. Termes de la Ley.

The term is particularly applied to absolute conveyances of real property. Conover v. Mutual Ins. Co., 1 N.Y. 290, 294. The voluntary and complete transfer from one person to another. Rich v. Doneghey, 71 Okl. 204, 177 P. 86, 89, 3 A.L.R. 352; Chouteau v. Chouteau, 49 Okl. 105, 152 P. 373, 376. Disposition by will. *Contra,* Postlethwaite v. Edson, 102 Kan. 619, 171 P. 769, 773, L.R.A.1918D, 983. Leases, especially of Indians' allotted lands. Bailey v. King, 57 Okl. 528, 157 P. 763, 764; Ashton v. Noble, 65 Okl. 45, 162 P. 784, 785; Williams v. Hylan, 215 N.Y.S. 101, 106, 126 Misc.Rep. 807. Every mode of passing realty by the act of the party, as distinguished from passing it by the operation of law. Rathbun v. Allen, 63 R.I. 109, 7 A.2d 273, 275. But the term is inapplicable to mortgages. Worthington v. Tipton, 24 N.M. 89, 172 P. 1048, 1049.

The act by which the title to real estate is voluntarily resigned by one person to another and accepted by the *latter,* in the forms prescribed by law. Cf. In re Ehrhardt, U.S.D.C., 19 F.2d 406, 407 (bankruptcy proceedings).

It is said to signify the wrongful transfer of property to another or the wrongful conversion of property for which an action of trover was maintainable at common law. Sauls v. Whitman, 171 Oki. 113, 42 P.2d 275, 280.

*In medical jurisprudence,* a generic term denoting the different kinds or forms of mental aberration or derangement.

ALIENATION IN MORTMAIN. See Amortization; Mortmain.

ALIENATION OF AFFECTIONS. The robbing of husband or wife of the conjugal affection, society, fellowship, and comfort which inheres in the normal marriage relation. Young v. Young, 236 Ala. 627, 184 So. 187, 190.

Loss of consortium between spouses from wrongful acts of others. Young v. Young, 236 Ala. 627, 184 So. 187, 190. The deprivation of one spouse of the right to the aid, comfort, assistance, and society of the other spouse in family relationships. Hargraves v. Ballou, 47 R.I. 186, 131 A. 643, 645.

ALIENATION OFFICE. In English practice, an office for the recovery of fines levied upon writs of covenant and entries.

ALIENEE. One to whom an alienation, conveyance, or transfer of property is made. See Alienor.

ALIENI GENERIS. Lat. Of another kind. 3 P. Wms. 247.

ALIENI JURIS. Lat. Under the control, or subject to the authority, of another person; *e. g.,* an infant who is under the authority of *his* father or guardian; a wife under the power of her husband. The term is contrasted with Sui Juris, *(q. v.).*

ALIENIGENA. One of foreign birth; an alien. 7 Coke, 31.

ALIENISM. The state, condition, or character of an alien. 2 Kent, Comm. 56, 64, 69.

ALIENIST. One who has specialized in the study of mental diseases. State v. Reidell, 9 Houst., Del., 470, 14 A. 550, 552. Persons qualified by experience, knowledge, and previous opportunities to express opinion as to defendant's mental condition at a particular time. People v. Norton, 138 Cal.App. 70, 31 P.2d 809, 810.

ALIENOR. He who makes a grant, transfer of title, conveyance, or alienation. Correlative of *alienee.*

ALIENUS. Lat. Another's; belonging to another; the property of another. *Alienus homo,* another's man, or slave. Inst. 4, 3, pr. *Aliena res,* another's property. Bract. fol. 13b.

ALIGNMENT. The act of laying out or adjusting a line. The state of being so laid out or adjusted. The ground plan of a railway or other road or work as distinguished from its profile or gradients. Village of Chester v. Leonard, 68 Conn. 495, 37 A. 397. An adjustment to a line. Harner v. Monongalia County Court, 80 W.Va. 626, 92 S.E. 781, 785.

ALIKE. Similar to another. The term is not synonymous with "identical," which means "exactly the same." Carn v. Moore, 74 Fla. 77, 76 So. 337, 340.

ALIMENT. In Scotch law, to maintain, support, provide for; to provide with necessaries. As a noun, maintenance, support; an allowance from the husband's estate for the support of the wife. Paters. Comp. §§ 845, 850, 893.

*In civil law,* food and other things necessary to the support of life; money allowed for the purpose of procuring these. Dig. 50, 16, 43.

*In common law,* to supply with necessaries. Purcell v. Purcell, 3 Edw.Ch.N.Y. 194.

ALIMENTA. Lat. In the civil law, aliments; things necessary to sustain life; means of support, including food, *(cibaria,)* clothing, *(vestitus,)* and habitation, *(habitatio.)* Dig. 34, 1, 6.

ALDIENTOS. The Spanish term for support and maintenance. Escriche Diccionario.

ALIMONY. Comes from Latin "alimonia" meaning sustenance, and means, therefore, the sustenance or support of the wife by her divorced husband and stems from the common-law right of the wife to support • by her husband. Eaton v. Davis, 176 Va. 330, 10 S.E.2d 893, 897. Derived from Latin word "alere," meaning to nourish or sustain. Allowances which husband by court order pays wife for maintenance while they are separated or after they are divorced. Merriman v. Hawbaker, D.C.Ill., 5 F.Supp. 432, 433. Or pending a suit for divorce. And see Bowman v. Worthington, 24 Ark. 522; Lynde v. Lynde, 64 N.J.Eq. 736, 52 A. 694, 58 L.R.A. 471. But in its strictly legal sense relates to the provisions made pendente lite. Warne v. Warne, 36 S.D. 573, 156 N. W. 60, 62. Compare Emerson v. Emerson, 120 Md. 584, 87 A. 1033, 1035, holding that in the absence of statute, in case of an absolute divorce the duty to support ceases and with it the right to alimony.

Generally it is restricted to money unless otherwise authorized by statute. Lloyd v. Lloyd, 183 Ga. 751, 189 S.E. 903, 904. But it may be such an allowance out of husband's estate. Davis v. Davis, 61 Okl. 275, 161 P. 190, 191. Equally applicable to all allowances, whether annual or in gross. Burrows v. Purple, 107 Mass. 432.

It may continue during the joint lives of husband and wife, or so long as they live apart. Cohen v. Cohen, Md., 174 Md. 61, 197 A. 564, 565, 566. But is essentially a different thing from a division of the property of the parties. Mesler v. Jackson, Circuit Judge, 188 Mich. 195, 154 N.W. 63, 65. Not being an "estate", nor the separate property of wife. Cizek v. Cizek, 69 Neb. 797, 99 N.W. 28.

It does not partake of nature of damages or penalty for husband's misconduct. Kennard v. Kennard, 87 N.H. 320, 179 A. 414, 419. Nor is it founded on contract, express or implied, but on husband's natural and legal duty to support wife. Smith v. Smith, D.C.N.Y., 7 F.Supp. 490, 491.

In its broad sense, it means also an award for the support of a child or children. Schafer v. Schafer, 193 N.Y.S. 43, 44, 118 Misc.Rep. 254; Brown v. Brown, 222 Mass. 415, 111 N.E. 42, 43. And it includes provision for an education. Floyd v. Floyd, 91 Fla. 910, 108 So. 896, 898.

*Alimony in gross,* or in a lump sum, is in the nature of a final property settlement, and hence in some jurisdictions is not included in the term "alimony," which in its strict or technical sense contemplates money payments at regular intervals. Parmly v. Parmly, 125 N.J.Eq. 545, 5 A.2d 789, 791; 27 C.J.S. Divorce, § 235, p. 965.

*Alimony pendente lite* is an allowance made pending a suit for divorce or separate maintenance including a reasonable allowance for preparation of the suit as well as for support. Davis v. Davis, 15 Wash.2d 297, 130 P.2d 355, 359. Or pending an appeal. Robinson v. Robinson, N.J. Err. & App., 92 A. 94, 96, L.R.A.1915B, 1071.

*Permanent alimony* is a provision for the support and maintenance of a wife during her lifetime. In re Spencer, 83 Cal. 460, 23 P. 395, 17 Am.St.Rep. 266.

ALIO INTUITU. Lat. In a different view; under a different aspect. 4 Rob.Adm. & Pr. 151. With another view or object; with respect to another case or condition. 7 East, 558; 6 M. & S. 231. See Diverso Intuitu.

ALIQUID CONCEDITUR NE INJURIA REMANEAT IMPUNITA, QUOD ALIAS NON CONCEDERETUR. Something is (will be) conceded, to prevent a wrong remaining unredressed, which otherwise would not be conceded. Co.Litt. 197b.

ALIQUID POSSESSIONIS ET NIHIL JURIS. Somewhat of possession, and nothing of right, (but no right).

A phrase used by Bracton to describe that kind of possession which a person might have of a thing as a guardian, creditor, or the like; and also that kind of possession which was granted for a term of years, where nothing could be demanded but the usufruct. Bract. fols. 39a, 160a.

ALIQUIS NON DEBET ESSE JUDEX IN PROPRIA CAUSA, QUIA NON POTEST ESSE JUDEX ET PARS. A person ought not to be judge in his own cause, because he cannot act as judge and party. Co.Litt. 141; 3 Bl.Comm. 59.

ALIQUOT. Strictly, contained in something else an exact number of times. But as applied to resulting trusts, "aliquot" is treated as meaning fractional. Fox v. Shanley, 94 Conn. 350, 109 A. 249, 251. And means any definite interest. Hinshaw v. Russell, 280 Ill. 235, 117 N.E. 406, 408.

ALITER. Otherwise; as otherwise held or decided.

ALIUD EST CELARE, ALIUD TACERE. To conceal is one thing; to be silent is another. Lord Mansfield, 3 Burr. 1910.

ALIUD EST DISTINCTIO, ALIUD SEPARATIO. Distinction is one thing; separation is another. It is one thing to make things distinct, another thing to make them separable.

ALIUD EST POSSIDERE, ALIUD ESSE *IN* POSSESSIONE. It is one thing to possess; it is another to be in possession. Hob. 163.

ALIUD EST VENDERE, ALIUD VENDENTI CONSENTIRE. To sell is one thing; to consent to a sale (seller) is another thing. Dig. 50, 17, 160.

ALIUD EXAMEN. A different or foreign mode of trial. 1 Hale, Com.Law, 38.

ALIUNDE, Lat. From another source; from elsewhere; from outside.

Evidence aliunde. Evidence from outside, from another source. In certain cases a written in-

strument may be explained by evidence *aliunde,* that is, by evidence drawn from sources exterior to the instrument itself, *e. g.,* the testimony of a witness to conversations, admissions, or preliminary negotiations.

Evidence aliunde (i. e., from without the will) may be received to explain an ambiguity in a will. 1 Greenl. Ev. § 291.

ALIUNDE RULE. A verdict may not be impeached by evidence of juror unless foundation for introduction thereof is first made by competent evidence aliunde, or from some other source. State v. Adams, 141 Ohio St. 423, 48 N.E.2d 861, 863, 146 A.L.R. 509.

ALIUS. Lat. Other. The neuter form is *aliud,* something else; another thing.

ALIVE. As respects birth, it means that child shall have an independent life of its own for some period, even momentarily, after birth. Evidenced by respiration or other indications of life, such as beating of heart and pulsation of arteries. Fleming v. Sexton, 172 N.C. 250, 90 S.E. 247, 249. Cf. Hydrostatic Test. Or heart tones in response to artificial respiration, or pulsation of umbilical cord after being severed. In re Stuertz' Estate, 124 Neb. 149, 245 N.W. 412, 413.

In respect of estate matters, a child en ventre *sa* mere is "born" and "alive" for all purposes for his benefit. In re Holthausen's Will, 175 Misc. 1022, 26 N.Y.S.2d 140, 143.

ALL. Means the whole of—used with a singular noun or pronoun, and referring to amount, quantity, extent, duration, quality, or degree. The whole number or sum of—used collectively, with a plural noun or pronoun expressing an aggregate. Every member of individual component of; each one of—used with a plural noun. In this sense, all is used generically and distributively. "All" refers rather to the aggregate under which the individuals are subsumed than to the individuals themselves. State v. Hallenberg-Wagner Motor Co., 341 Mo. 771, 108 S.W.2d 398, 401. See Both.

ALL AMERICAN. Indicative of supremacy, superiority, and distinction in the athletic world. R. W. Eldridge Co. v. Southern Handkerchief Mfg. Co., D.C.S.C., 23 F.Supp. 179, 182, 184, 185.

ALL AND SINGULAR. All without exception. A comprehensive term often employed in conveyances, wills, and the like, which includes the aggregate or whole and also each of the separate items or components. McClaskey v. Barr, C.C., 54 Fed. 798.

ALL CASES AT LAW. Within constitutional guaranty of jury trial, refers to common law actions as distinguished from causes in equity and certain other proceedings. Breimhorst v. Beckman, 227 Minn. 409, 35 N.W.2d 719, 734.

ALL DISABILITY. Includes both total and partial disability caused by a permanent injury to the leg or arm, or resulting from or relating to the permanent injury, and embraces not only all incapacity to labor, directly or indirectly arising from such permanent injury, but likewise cases of no incapacity at all. Bausch v. Fidler, 277 Pa. 573, 121 A. 507. Includes pain, annoyance, inconveniences, disability to work, and everything incident to the permanent injury. Vanaskie v. Stevens Coal Co., 133 Pa.Super. 457, 2 A.2d 531, 532.

ALL FAULTS. A sale of goods with "all faults" covers, in the absence of fraud on the part of the vendor, all such faults and defects as are not inconsistent with the identity of the goods as the goods described. Whitney v. Boardman, 118 Mass. 242.

ALL FOURS. Two cases or decisions which are alike in all material respects, and precisely similar in all the circumstances affecting their determination, are said to be or to run on "all fours."

ALL THE ESTATE. The name given in England to the short clause in a conveyance or other assurance which purports to convey "all the estate, right, title, interest, claim, and demand" of the grantor, lessor, etc., in the property dealt with. Da$^{y}$.Conv. 93.

ALL THE MEMBERS. The provision of a church constitution that "all the members" can discharge their parish priest means that all shall have opportunity to participate, but not that all members must attend the meeting or vote in the affirmative for the discharge of the priest. Stryjewski v. Panfil, 269 Pa. 568, 112 A. 764, 765.

ALL—ADDENDUM. As respects patent on a tooth gearing, "all-addendum" and "all-dedendum" mean that the working faces of the teeth of one element are outside, and those of the other element inside, their respective "pitch *circles" which* refers to circles passing through the pitch point and coaxial with the axes of rotation of the intermeshing gear wheels. In re Cook, Cust. & Pat. App., 103 F.2d 909, 911.

ALLEGANS CONTRARIA NON EST AUDIENDUS. One alleging contrary or contradictory things (whose statements contradict each other) is not to be heard. 4 Inst. 279. Applied to the statements of a witness.

ALLEGANS SUAM TURPIT1UDINEM NON EST AUDIENDUS. One who alleges his own infamy is not to be heard. 4 Inst. 279.

ALLEGARI NON DEBUIT QUOD PROBATUM NON RELEVAT. That ought not to be alleged which, if proved, is not relevant. 1 Ch.Cas. 45.

ALLEGATA. In Roman law, a word which the emperors formerly signed at the bottom of their rescripts and constitutions; under other instruments they usually wrote *signata* or *testata.* Encyc. Lond.

ALLEGATA ET PROBATA. Lat. Things alleged and proved. The allegations made by a party to a suit, and the proof adduced in their support. Crump v. State, 30 Ala.App. 241, 4 So.2d 188, 189.

ALLEGATIO CONTRA FACTUM NON EST ADMITTENDA. An allegation contrary to the deed (or fact) is not admissible.

ALLEGATION. The assertion, declaration, or statement of a party to an action, made in a pleading, setting out what he expects to prove. Mathews v. Underpinning & Foundation Co., 17 N. J.Misc. 79, 4 A.2d 788, 789.

A material allegation in a pleading is one essential to the claim or defense.

*In ecclesiastical law,* the statement of the facts intended to be relied on in support of the contested suit.

In English ecclesiastical practice the word seems to designate the pleading as a whole ; the three pleadings are known as the allegations; and the defendant's plea is distinguished as the defensive, or sometimes the responsive, allegation, and the complainant's reply as the rejoining allegation.

ALLEGATION OF FACT. Generally narration of transaction by stating details according to their legal effect, and statement of right or liability flowing from certain facts is conclusion of law. Maylender v. Fulton County Gas & Electric Co., 131 Misc. 514, 227 N.Y.S. 209, 217.

ALLEGATION OF FACULTIES. A statement made by the wife of the property of her husband, in order to obtain alimony. Wright v. Wright, 3 Tex. 168. See Faculties.

ALLEGE. To state, recite, assert, or charge; to make an allegation. To affirm, assert, or declare. State v. Hostetter, Mo.Sup., 222 S.W. 750, 754.

ALLEGED. Stated; recited; claimed; asserted; charged. Lynn v. Nichols, 122 Misc.Rep. 170, 202 N.Y.S. 401, 406.

ALLEGIANCE. Obligation of fidelity and obedience to government in consideration for protection that government gives. U. S. v. Kuhn, D.C.N.Y., 49 F.Supp. 407, 414.

The citizen or subject owes an absolute and permanent allegiance to his government or sovereign until he becomes a citizen or subject of another government or another sovereign. The alien owes a local and temporary allegiance during period of his residence. U. S. v. Wong Kim, Ark., 169 U.S. 649, 18 Sup.Ct. 456, 42 L.Ed. 890.

"The tie or *ligamen* which binds the subject [or citizen] to the king [or government] in return for that protection which the king [or government] affords the subject, [or citizen."] 1 Bl.Comm. 366. It consists in "a true and faithful obedience of the subject due to his sovereign," 7 Coke, 4b, and is a comparatively modern corruption of ligeance *(ligeantia),* which is derived from liege *(ligius),* meaning absolute or unqualified. It signified originally liege fealty, 1. e. absolute and unqualified fealty. 18 L. Q. Rev. 47.

In Norman French, alleviation; relief ; redress. Kelham.

*Acquired allegiance,* is that binding a naturalized citizen.

Local *or actual allegiance,* is that measure of obedience due from a subject of one government to another government, within whose territory he is temporarily resident. From this are excepted foreign sovereigns and their representatives, naval and armed forces when permitted to remain in or pass through the country or its waters.

*Natural allegiance.* In English law, that kind of allegiance which is due from all men born within the king's dominions, immediately upon their birth, which is intrinsic and perpetual, and- cannot be divested by any act of their own. 1 Bl.Comm. 369; 2 Kent, Comm. 42. In American law, the allegiance due from citizens of the United States to their native country, and also from naturalized citizens, and which cannot be renounced without the permission of government, to be declared by law. 2 Kent, Comm. 43-49.

It is said to be due to the king in his political, not his personal, capacity; L. R. 17 Q. B. D. 54, quoted in U. S. v. Wong Kim, Ark., 169 U.S. 663, 18 Sup.Ct. 456, 42 L.Ed. 890; and so in the United States "it is a political obligation" depending not on ownership of land, but on the enjoyment of the protection of government; Wallace v. Harmstad, 44 Pa. 492; and it "binds the citizen to the observance of all laws" of his own sovereign; Adams v. People, 1 N.Y. 173.

ALLEGIARE. To defend and clear one's self; to wage one's own law. An archaic word which simply means to define or justify by due course of law. State v. Hostetter, Mo., 222 S.W. 750.

ALLEGING DIMINUTION. The allegation in an appellate court, of some error in a subordinate part of the *nisi prius* record. See Diminution.

ALLEN CHARGE. An instruction advising jurors to have deference for each other's views, that they should listen, with a disposition to be convinced, to each other's argument, deriving its name from the case of Allen v. United States, 164 U.S. 492, 17 S.Ct. 154, 41 L.Ed. 528, wherein the instruction was approved. Coupe v. United States, 72 App.D.C. 86, 113 F.2d 145, 149; Green v. U. S., 309 F.2d 852. Variously called dynamite charge, shotgun instruction, third degree instruction.

ALLERGY. A susceptibility to disease. Vogt v. Ford Motor Co., Mo.App., 138 S.W.2d 684, 688.

ALLEVIARE. L. Lat. In old records, to levy or pay an accustomed fine or composition; to redeem by such payment. Cowell.

ALLEY. A narrow way designed for the special accommodation of the property it reaches. Atchison, T. & S. F. Ry. Co. v. City of Chanute, 95 Kan. 161, 147 P. 836, 837; Wooldridge v. Pacific Coast Coal Co., Wash., 155 P.2d 1001, 1003.

ALLIANCE. The relation or union between persons or families contracted by intermarriage; affinity.

*In international law,* a union or association of two or more states or nations, formed by league or treaty, for the joint prosecution of a war (offensive alliance), or for their mutual assistance and protection in repelling hostile attacks (defensive alliance). The league or treaty by which the association is formed. The act of confederating, by league or treaty, for the purposes mentioned.

The term Is also used in a wider sense, embracing unions for objects of common interest to the contracting parties,

as the "Holy Alliance" entered into in 1815 by Prussia, Austria and Russia for the purpose of counteracting the revolutionary movement in the interest of political liberalism.

ALLISION. The running of one vessel into or against another, as distinguished from a collision, i. *e.,* the running of two vessels against each other. But this distinction is not very carefully observed.

ALLOCABLE. Synonymous with "distributable". In analyzing accounts, the breaking down of a lump sum charged or credited to one account into several parts to be charged or credited to other accounts. Fleming v. Commissioner of Internal Revenue, C.C.A.Tex., 121 F.2d 7, 9.

ALLOCATE. Power to allocate critical materials included power to distribute, to assign, to allot. Gallagher's Steak House v. Bowles, C.C.A.N.Y., 142 F.2d 530, 534. To ration or withhold from private consumption. State ex rel. Guide Management Corp. *v.* Alexander, 223 Ind. 221, 59 N.E.2d 169, 172.

ALLOCATION. An allowance made upon an account in the English exchequer. Cowell. Placing or adding to a thing. Encyc. Lond.

Assignment or allotment. Jacobson v. Bowles, D.C.Tex., 53 F.Supp. 532, 534.

ALLOCATIONE FACIENDA. In old English practice, a writ for allowing to an accountant such sums of money as he hath lawfully expended in his office; directed to the lord treasurer and barons of the exchequer upon application made. Jacob.

ALLOCATO COMITATU. In old English practice, in proceedings in outlawry, when there were but two county courts holden between the delivery of the writ of *exigi facias* to the sheriff and its return, a special *exigi facias,* with an *allocato comitatu* issued to the sheriff in order to complete the proceedings. See Exigent.

ALLOCATUR. Lat. It is allowed. A word formerly used to denote that a writ or order was allowed.

A word denoting the allowance by a master or prothonotary of a bill referred for his consideration, whether touching costs, damages, or matter of account. Lee, Diet.

*A special allocatur is* the special allowance of a writ (particularly a writ of error) which is required in some particular cases.

ALLOCATUR EXIGENT. A species of writ anciently issued in outlawry proceedings, on the return of the original writ of exigent. 1 Tidd, Pr. 128. See Exigent.

ALLOCUTION. Formality of court's inquiry of prisoner as to whether he has any legal cause to show why judgment should not be pronounced against him on verdict of conviction. Archb.Crim. Pl. 173; State v. Pruitt, Mo., 169 S.W.2d 399, 400.

ALLOCUTUS. See Allocution.

ALLODARII. Owners of allodial lands. Owners of estates as large as a subject may have. Co. Litt 1; Bac. Abr. *"Tenure,"* A.

ALLODIAL. Free; not holden of any lord or superior; owned without obligation of vassalage or fealty; the opposite of feudal. Barker v. Dayton, 28 Wis. 384; Wallace v. Harmstad, 44 Pa. 499.

ALLODIUM. Land held absolutely in one's own right, and not of any lord or superior; land not subject to feudal duties or burdens.

An estate held by absolute ownership, without recognizing any superior to whom any duty is due on account thereof. 1 Washb.Real Prop. 16. McCartee v. Orphan Asylum, 9 Cow., N.Y., 511, 18 Am.Dec. 516.

ALLOGRAPH. A writing or signature made for a person by another; opposed to autograph.

ALLONGE. A piece of paper annexed to a bill of exchange or promissory note, on which to write endorsements for which there is no room on the instrument itself. Pardessus, n. 343; Story, Prom. Notes, §§ 121, 151; Fountain v. Bookstaver, 141 Ill. 461, 31 N.E. 17; Bergmann v. Puhl, 195 Wis. 120, 217 N.W. 746, 748, 56 A.L.R. 915.

ALLOPATHIC PRACTICE. The ordinary method of practicing medicine as adopted and taught by the great body of physicians. Bradbury v. Bardin, 34 Conn. 452, 453, 35 Conn. 577. Also, and more properly, that method of combatting disease by the use of remedies producing effects different from those of the disease being treated;—opposed to homeopathy.

ALLOT. To apportion, distribute; to divide property previously held in common among those entitled, assigning to each his ratable portion, to be held in severalty; to set apart specific property, a share of a fund, etc., to a distinct party. Millet v. Bilby, 110 Okl. 241, 237 P. 859, 861.

In the law of corporations, to allot shares, debentures, etc., is to appropriate them to the applicants or persons who have applied for them; this is generally done by sending to each applicant a letter of allotment, informing him that a certain number of shares have been allotted to him. Sweet.

ALLOTMENT. A share or portion; that which is allotted; apportionment, division; the distribution of shares in a public undertaking or corporation. Reuter v. Reuter's Succession, 206 La. 474, 19 So.2d 209, 212. Assignment. Pace v. Eoff, Tex. Com.App., 48 S.W.2d 956, 963. Partition; the distribution of land under an enclosure act. The term ordinarily and commonly used to describe land held by Indians after allotment, and before the issuance of the patent in fee that deprives the land of its character as Indian country. Estes v. U. S., C.C.A., 225 F. 980, 981; Harris v. Grayson, 90 Okl. 147, 216 P. 446, 449. See Allottee.

ALLOTMENT CERTIFICATE. A document issued to an applicant for shares in a company or public loan announcing the number of shares allotted or assigned and the amounts and due dates of the calls or different payments to be made on the same. An "allotment certificate," when issued to an enrolled member of the Five Civilized Tribes of the Indian Territory, is *an*

adjudication of the special tribunal empowered to decide the question that the party to whom it issues is entitled to the land, and it is a conveyance of the right to this title to the allottee. Bowen v. Carter, 42 Okl. 565, 144 P. 170, 173.

ALLOTMENT NOTE. In English law, a writing by a seaman, whereby he makes an assignment of part of his wages in favor of his wife, father or mother, grandfather or grandmother, brother or sister. Motley & Whitley.

ALLOTMENT SYSTEM. Designates the practice in England of dividing land in small portions for cultivation by agricultural laborers and other cottagers at their leisure, and after they have performed their ordinary day's work. Wharton.

ALLOTMENT WARDEN. By the English general inclosure act, 1845, § 108, when an allotment for the laboring poor of a district has been made on an inclosure under the act, the land so allotted is to be under the management of the incumbent and church warden of the parish, and two other persons elected by the parish, and they are to be styled "the allotment wardens" of the parish. Sweet.

ALLOTTEE. One to whom an allotment is made, who receives a ratable share under an allotment; a person to whom land under an inclosure act or shares in a public undertaking are allotted.

An "allottee," as the word is used in the act of April 21, 1904 (chapter 1402, 33 Stat. 189-204), is one, generally an Indian, freedman, or adopted citizen of a tribe of Indians, to whom a tract of land out of a common holding has been given by, or under the supervision of, the United States. Lynch v. Franklin, 37 Okl. 60, 130 P. 599, 600. The word does not include such allottee's heirs. Bradley v. Goddard, 45 Oki. 77, 145 P. 409, 410.

ALLOW. The word has no rigid or precise meaning, but its import varies according to circumstances or context in connection with which it is used. It may mean bestow, assign, to any one as his right or due, to accord, or to imply discretion, or unqualified and definite promise to do some specified thing. Dunlop Sand & Gravel Corporation v. Hospelhorn, 172 Md. 279, 191 A. 701, 706. To approve of, accept as true, approve, admit, concede, adopt, or fix. Headford Bros. & Hitchins Foundry Co. v. Associated Manufacturers Corporation of America, 224 Iowa 1364, 278 N.W. 624, 628. To grant something as a deduction or an addition; to abate or deduct; as, to allow a sum for leakage. Pittsburgh Brewing Co. v. Commissioner of Internal Revenue, C.C.A.3, 107 F.2d 155, 156. To grant, or permit; as to allow an appeal or a marriage; to allow an account or claim. Also to give a fit portion out of a larger property or fund. Thurman v. Adams, 82 Miss. 204, 33 So. 944. To sanction, either directly or indirectly, as opposed to merely suffering a thing to be done. People v. Duncan, 22 Cal.App. 430, 134 P. 797, 798; to acquiesce in. Luckie v. Diamond Coal Co., 41 Cal.App. 468, 183 P. 178, 181; Curtis & Gartside Co. v. Pigg, 39 Okl. 31, 134 P. 1125, 1129. To suffer, to tolerate; Gregory v. U. S., 17 Blatchf. 325, Fed.Cas.No.5,803; to fix; Hinds v. Marmolejo, 60 Cal. 229. To substitute. Glenn v. Glenn, 41 Ala. 571. Intent in wills; and an equivalent of I will; Ramsey v. Hanlon, C.C. Pa., 33 F. 425.

ALLOWANCE. A deduction, an average payment, a portion assigned or allowed; the act of allowing. See Stone v. State, 197 Ala. 293; 72 So. 536, 537; Sawyer v. U. *S., C.C.A.,* 10 F.2d 416, 421. For "Family," see that title.

In army terminology, ordinarily refers to extra and special items in addition to regular compensation. United States v. Jackson, S.C., 302 U.S. 628, 58 S.Ct. 390, 392, 82 L. Ed. 488.

As distinguished from a "salary," which is a fixed compensation, decreed by authority and for permanence, and is paid at stated intervals, and depends upon time, and not the amount of the services rendered, "allowance" is a variable quantity. Blaine County v. Pyrah, 32 Idaho, 111, 178 P. 702, 703.

Not synonymous with "alimony". Warne v. Warne, 36 S.D. 573, 156 N.W. 60, 62.

*Special allowances.* In English practice, in taxing the costs of an action as between party and party, the taxing officer is, in certain cases, empowered to make special allowances; *i. e.,* to allow the party costs which the ordinary scale does not warrant. Sweet.

ALLOWANCE PENDENTE LITE. In the English chancery division, where property which forms the subject of proceedings is more than sufficient to answer all claims in the proceedings, the court may allow to the parties interested the whole or part of the income, or (in the case of personalty) part of the property itself. St. 15 & 16 Vict. c. 86, § 57; Daniell, Ch.Pr. 1070.

ALLOWED CLAIM. Against an estate it is a debt or charge which is valid in law and entitled to enforcement. Commissioner of Internal Revenue v. Lyne, C.C.A.1, 90 F.2d 745, 747.

ALLOY. An inferior or cheaper metal mixed with gold or silver in manufacturing or coining. As respects coining, the amount of alloy is fixed by law, and is used to increase the hardness and durability of the coin.

A compound of two or more metals. Treibacher-Chethische Werke Gesellschaft mit Beschrankter Haftung v. Roessler & Hasslacher Chemical Co., C.C.A.N.Y., 219 F. 210, 211. A mixture or combination of metals while in state of fusion. Pittsburgh Iron & Steel Foundries Co. v. Seaman-Sleeth Co., D.C.Pa., 236 F. 756, 757; Treibacher Chemische Werke Gesellschaft mit Beschrankter Haftung v. Roessler & Hasslacher Chemical Co., D.C.N.Y., 214 F. 410, 412.

ALLOYNOUR. L. Fr. One who conceals, steals, or carries off a thing privately. Britt. c. 17. See Eloigne.

ALLUVIO MARIS. Lat. In the civil and old English law, the washing up of the sea; the soil thus formed; formation of soil or land from the sea; maritime increase. Hale, Anal. § 8. *"Alluvio maris* is an increase of the land adjoining, by the projection of the sea, casting up and adding sand and slubb to the adjoining land, whereby it is increased, and for the most part by insensible degrees." Hale, de Jure Mar. pt. 1, c. 6.

ALLUVION. That increase of the earth on a shore or bank of a stream or the sea, by the force of the water, as by a current or by waves, which is so gradual that no one can judge how much is added at each moment of time. Inst. 1, 2, t. 1, § 20. Ang. Water Courses, 53. Jefferis v. East Omaha Land Co., 134 U.S. 178, 10 Sup.Ct. 518, 33 L.Ed. 872. Willett v. Miller, 176 Okl. 278, 55 P.2d 90, 92. "Accretion" denotes the act. However, the terms are frequently used synonymously. Katz v. Patterson, 135 Or. 449, 296 P. 54, 55. Avulsion is sudden and perceptible. St. Clair County v. Lovingston, 23 Wall. 46, 23 L.Ed. 59. See Accretion; Avulsion.

ALLY. A nation which has entered into an alliance with another nation. 1 Kent, Comm. 69.

A citizen or subject of one of two or more allied nations. Siemund v. Schmidt, Mun.Ct.N.Y., 168 N.Y.S. 935.

ALMANAC. A publication, in which is recounted the days of the week, month, and year, both common and particular, often distinguishing the fasts, feasts, terms, etc., from the common days by proper marks, pointing out also the several changes of the moon, tides, eclipses, etc.

ALMARIA. The archives, or, as they are sometimes styled, muniments of a church or library.

ALMESFEOH. In Saxon law, alms-fee; alms-money. Otherwise called "Peter-pence." Cowell.

ALMOIN. Alms; a tenure of lands by divine service. See Frankalmoigne.

ALMONER. One charged with the distribution of alms. The office was first instituted in religious houses and although formerly one of importance is now in England almost a sinecure.

ALMOXARIFAZGO. In Spanish law, a general term, signifying both export and import duties, as well as excise.

ALMS. Charitable donations. Any species of relief bestowed upon the poor. That which is given by public authority for the relief of the poor.

ALMS FEE. Peter-pence (or Peter's pence), *which* see.

ALMSHOUSE. A house for the publicly supported paupers of a city or county. People v. City of New York, 36 Hun, N.Y., 311. In England an almshouse is not synonymous with a workhouse or poorhouse, being supported by private endowment.

It may be a public institution kept up by public revenues, or it may be an institution maintained by private endowment and contributions, where the indigent, sick, and poor are cared for without cost to themselves. State Board of Control v. Buckstegge, 18 Ariz. 277, 158 P. 837, 839.

ALNAGER, or ULNAGER. A sworn officer of the king whose duty it was to look to the assise of woolen cloth made throughout the land, and to the putting on the seals for that purpose ordained, for which he collected a duty called "alnage." Cowell; Termes de la Ley.

ALNETUM. In old records, a place where alders grow, or a grove of alder trees. Doomsday Book; Co.Litt. 4b.

ALOD, Alode, Alodes, Alodis. L. Lat. In feudal law, old forms of *alodium* or *allodium (q. v.).*

A term used in opposition to *feodum* or *fief,* which means property, the use of which was bestowed upon another by the proprietor, on condition that the grantee should perform certain services for the grantor, and upon the failure of which the property should revert to the original possessor. See 1 Poll. & Maitl. 45.

ALODIAN. Sometimes used for *anodial,* but not well authorized. Cowell.

ALODIARII. See Allodaril.

ALONE. Apart from others; singly; sole. Salem Capital Flour Mills Co. v. Water-Ditch & Canal Co., C.C.Or., 33 Fed. 154.

ALONG. Lengthwise of, implying motion or at or near, distinguished from across. Nicolai v. Wisconsin Power & Light Co., 227 Wis. 83, 277 N.W. 674, 678. By, on, up to, or over, according to the subject-matter and context. State v. Downes, 79 N.H. 505, 112 A. 246; Sioux City Bridge Co. v. Miller, C.C.A., 12 F.2d 41, 48. The term does not necessarily mean touching at all points; Com. v. Franklin, 133 Mass. 569; nor does it necessarily imply contact, Watts v. City of Winfield, 101 Kan. 470, 168 P. 319, 321.

ALSO. Besides; as well; in addition; likewise; in like manner; similarly; too; withal. West Jersey Trust Co. v. Hayday, 124 N.J.Eq. 85, 199 A. 407, 411. Some other thing; including; further; furthermore; in the same manner; moreover; nearly the same as the word "and" or "likewise." Schilling v. Central California Traction Co., 1 P. 2d 53, 55, 115 Cal.App. 30.

The word imports no more than "item" and may mean the same as "moreover" ; but not the same as "in like manner" ; Evans v. Knorr, 4 Rawle (Pa.) 68; nor is it synonymous with "other," City of Ft. Smith v. Gunter, 106 Ark. 371, 154 S.W. 181, 183. It may be (1) the beginning of an entirely different sentence, or (2) a copulative carrying on the sense of the immediately preceding words into those immediately succeeding. Stroud, Jud. Dict., citing 1 Jarm. 497 n. ; 1 Salk. 239; Security State Bank v. Jones, 121 Kan. 396, 247 P. 862, 863.

ALT. In Scotch practice, an abbreviation of *Alter,* the other; the opposite party; the defender. 1 Broun, 336, note.

ALTA PRODITIO. L. Lat. In old English law, high treason. 4 Bl.Comm. 75. See High Treason.

ALTA VIA. L. Lat. In old English law, a highway; the highway. 1 Salk. 222. *Alta via regia;* the king's highway; "the king's high street." Finch, Law, b. 2, c. 9.

ALTARAGE. In ecclesiastical law, offerings made on the altar; all profits which accrue to the priest by means of the altar. Ayliffe, Parerg. 61.

ALTENHEIM. A German word meaning "home for old people." German Pioneer Verein v. Meyer, 70 N.J.Eq. 192, 63 A. 835.

ALTER. To make a change in; to modify; to vary in some degree; to change some of the elements or ingredients or details without substituting an entirely new thing or destroying the identity of the thing affected. Davis v. Campbell, 93 Iowa, 524, 61 N.W. 1053. To change partially. Cross v. Nee, D.C.Mo., 18 F.Supp. 589, 594. To change in one or more respects, but without destruction of existence or identity of the thing changed; to increase or diminish. Kraus v. Kraus, 301 I1l.App. 606, 22 N.E.2d 862. See Alteration; Change.

To change may import the substitution of an entirely different thing, while to alter is to operate upon a subject-matter which continues objectively the same while modified in some particular. To "amend" implies that the modification made in the subject improves it, which is not necessarily the case with an alteration. See Ex parte Woo Jan, D.C.Ky., 228 F. 927, 940.

But "alter" is sometimes used synonymously with "change," Board of Sup'rs of Yavapai County v. Stephens, 20 Ariz. 115, 177 P. 261, 264, and with "enlarge," City of Jamestown v. Pennsylvania Gas Co., C.C.A.N.Y., 1 F.2d 871, 883.

The other; the opposite party. See Alt,

ALTER EGO. Second self. 3 C.J.S. Alter Ego.

Theory that subordinate or servient corporation may be controlled by superior or dominant corporation, so that dominant corporation may be held liable for subordinate corporation's negligence. Barnes v. Liebig, 146 Fla. 219, 1 So.2d 247, 253.

To establish the "alter ego" doctrine, it must be shown that the stockholders disregarded the entity of the corporation, made corporation a mere conduit for the transaction of their own private business, and that the separate individualities of the corporation and its stockholders in fact ceased to exist. Sefton v. San Diego Trust & Savings Bank, Cal.App., 106 P.2d 974, 984.

The doctrine of "alter ego" does not create assets for or in corporation, but it simply fastens liability on the individual who uses the corporation merely as an instrumentality in conducting his own personal business, and that liability springs from fraud perpetrated not on the corporation, but on third persons dealing with corporation. Garvin v. Matthews, 193 Wash. 152, 74 P.2d 990, 992.

A new corporation taking over all of mortgaged assets of old corporation in exchange for all of old corporation's capital stock and continuing to operate business formerly operated by old corporation was "alter ego" of old corporation so as to be obligated to pay annual patent royalty which old corporation was required to pay, notwithstanding that old corporation retained title to mortgaged assets. Dummer v. Wheeler Osgood Sales Corp., 198 Wash. 381, 88 P.2d 453, 458.

ALTERATION. Variation; changing; making different. A change of a thing from one form or state to another; making a thing different from what it was without destroying its identity. Paye v. City of Grosse Pointe, 279 Mich. 254, 271 N.W. 826, 827. See Alter.

As applied to *buildings*, it is a change or substitution in a substantial particular of one part of a building for a building different in that particular; a change or changes within the superficial limits of an existing structure; an installation that becomes an integral part of the building and changes its structural quality; a substantial change therein; a varying or changing the form or nature of such building without destroying its identity. Paye v. City of Grosse Pointe, 279 Mich. 254, 271 N.W. 826, 827.

Alteration of *highway* means change of course of existing highway, leaving it substantially the same highway as before, but with its course in some respects changed. Huening v. Shenkenberg, 208 Wis. 177, 242 N.W. 552, 553.

An alteration is an act done upon the *instrument* by which its meaning or language *is* changed. If what is written upon or erased from the instrument has no tendency to produce this result, or to mislead any person, it is not an alteration. Oliver v. Hawley, 5 Neb. 444.

An alteration is said to be *material* when it affects, or may possibly affect, the rights of the persons interested in the document.

Language different in legal effect, or change in rights, interests, or obligations of parties. Bank of Moberly v. Meals, 316 Mo. 1158, 295 S.W. 73, 77; Commercial Credit Co. v. Giles, Tex.Civ.App., 207 S.W. 596, 598. It introduces some change into instrument's terms, meaning, language, or details. See U. S. v. Sacks, 257 U.S. 37, 42 S.Ct. 38, 39, 66 L. Ed. 118. Strictly speaking, it is some material change on face of instrument by one of the parties thereto without consent of the other, Johnston v. DePuy, 15 N.J.Misc. 94, 188 A. 742, 743; since a mutual agreement of parties concerned creates a new agreement. Leake, Cont. 430. If performed by a mere stranger, it is more technically described as a *spoliation* or *mutilation*. Knox v. Horne, Tex.Civ.App., 200 S.W. 259, 260; Bercot v. Velkoff, 111 Ind. App. 323, 41 N.E.2d 686, 692. The term is not properly applied to any change which involves the substitution of a practically new document. Kempner v. Simon, 195 N.Y.S. 333, 334, 119 Misc.Rep. 60. And it should in strictness be reserved for the designation of changes *in* form or language, and not used with reference to modifications in matters of substance. The term is also to be distinguished from "defacement." Too, if what is done simply takes away what was given before, or a part of it under a *will*, it is a revocation; but if it gives something in addition or in substitution, then it is an alteration. Appeal of Miles, 68 Conn. 237, 36 A. 39, 36 L.R.A. 176.

ALTERCATION. Warm contentions in words, dispute carried on with heat or anger, controversy, wrangle, wordy contest. Ivory v. State, 128 Tex.Cr.R. 408, 81 S.W.2d 696, 698.

ALTERIUS CIRCUMVENTIO ALU NON PRIEBET ACTIONEM. The deceiving of one person does not afford an action to another. Dig. 50, 17, 49.

ALTERNAT. A usage among diplomatists by which the rank and places of different powers, who have the same right and pretensions to precedence, are changed from time to time, either in a certain regular order or one determined by lot. In drawing up treaties and conventions, for example, it is the usage of certain powers to alternate, both in the preamble and the signatures, so that each power occupies, in the copy intended to be delivered to it, the first place. Wheat.Int. Law, § 157.

ALTERNATE LEGACY. See Legacy.

ALTERNATIM. L. Lat. Interchangeably. Litt. § 371; Townsh.Pl. 37.

ALTERNATIVA PETITIO NON EST AUDIENDA. An alternative petition or demand is not to be heard. 5 Coke, 40.

ALTERNATIVE. One or the other of two things; giving an option or choice; allowing a choice between two or more things or acts to be done. See Malone v. Meres, 91 Fla. 709, 109 So. 677, 693.

ALTERNATIVE CONTRACT. A contract whose terms allow of performance by the doing of either one of several acts at the election of the party from whom performance is due. Crane v. Peer, 43 N.J.Eq. 553, 4 A. 72.

ALTERNATIVE JUDGMENT. See Judgment.

ALTERNATIVE OBLIGATION. An obligation allowing the obligor to choose which of two things he will do, the performance of either of which will satisfy the instrument. A promise to deliver a certain thing or to pay a specified sum of money is an example of this kind of obligation.

ALTERNATIVE PLEADING. A pleading alleging substantive facts so disjunctively that it cannot be determined upon which of them the pleader intends to rely as basis for recovery. Groover v. Savannah Bank & Trust Co., 186 Ga. 476, 198 S.E. 217, 219.

ALTERNATIVE RELIEF. The term "alternative," as used in Equity Rule 25 (see Fed.Rules Civ.Proc. rule 8, 28 U.S.C.A.), allowing relief to be stated and sought in alternative forms, means mutually exclusive. Boyd v. New York & H. R. Co., D.C.N.Y., 220 F. 174, 179.

ALTERNATIVE REMAINDERS. Remainders In which disposition of property is made in alternative, one to take effect only in case the other does not, and in substitution of it. Riddle v. Killian, 366 Ill. 294, 8 N.E.2d 629, 634.

ALTERNATIVE REMEDY. Where a new remedy is created in addition to an existing one, they are called "alternative" if only one can be enforced; but if both, "cumulative."

ALTERNATIVE WRIT. A writ commanding the person against whom it is issued to do a specified thing, or show cause to the court why he should not be compelled to do it. Allee v. McCoy, 2 Marv., Del., 465, 36 A. 359. Under the common-law practice, the first *mandamus is* an alternative writ; 3 Bla.Com. 111; but in modern practice this writ is often dispensed with and its place is taken by a rule to show cause. See Mandamus.

ALTERNIS VICIBUS. L. Lat. By alternate turns; at alternate times; alternately. Co.Litt. 4a; Shep.Touch. 206.

ALTERUM NON LIEDERE. Not to injure another. This maxim, and two others, *honeste vivere,* and *suum cuique tribuere, (q. v.,)* are considered by Justinian as fundamental principles upon which all the rules of law are based. Inst. 1, 1, 3.

ALTERUTER. Lat. One of two; either.

ALTIUS NON TOLLENDI. In the civil law, a servitude due by the owner of a house, by which he is restrained from building beyond a certain height. Dig. 8, 2, 4; Sandars, Just.Inst. 119.

ALTIUS TOLLENDI. In the civil law, a servitude which consists in the right, to him who is entitled to it, to build his house as high as he may think proper. In general, however, every one enjoys this privilege, unless he is restrained by some contrary title. Sandars, Just.Inst. 119.

ALTO ET BASSO. High and low. This phrase is applied to an agreement made between two contending parties to submit all matters in dispute, *alto et basso,* to arbitration. Cowell.

ALTUM MARE. L. Lat. In old English law, the high sea, or seas. Co.Litt. 260b. The deep sea. *Super altum mare,* on the high seas. Hob. 212b.

ALUMNUS. A child which one has nursed; a foster-child. Dig. 40, 2, 14.

Also a graduate from a school, college, or other institution of learning.

ALVEUS. The bed or channel through which the stream flows when it runs within its ordinary channel. Calvinus, Lex.

*Alveus derelictus,* a deserted channel. Mackeld. Rom.Law, § 274.

AMALGAMATION. Union of different races, or diverse elements, societies, or corporations, so as to form a homogeneous whole or new body; interfusion; intermarriage; consolidation; coalescence; as, the amalgamation of stock. Stand. Dict.

To join in a single body two or more associations, organizations, or corporations. Peterson v. Evans, 288 Ill.App. 623, 6 N.E.2d 520.

In England it is applied to the merger or consolidation of two incorporated companies or societies.

The word has no definite meaning; it involves the blending of two concerns into one; 1904, 2 Ch. 268.

AMALPHITAN CODE OR TABLE. A collection of sea-laws, compiled about the end of the eleventh century, by the people of Amalphi.

It consists of the laws on maritime subjects, which were or had been in force in countries bordering on the Mediterranean; and was for a long time received as authority in those countries. Azuni; Wharton. It became a part of the law of the sea; The Scotia, 14 Wall., U.S., 170, 20 L.Ed. 822. See Code.

AMANUENSIS. One who writes on behalf of another that which he dictates.

AMBACTUS. A messenger; a servant sent about; one whose services his master hired out. Spelman.

AMBASCIATOR. A person sent about in the service of another; a person sent on a service, A word of frequent occurrence in the writers of the middle ages. Spelman.

AMBASSADOR. In international law, a public officer, clothed with high diplomatic powers, commissioned by a sovereign prince or state to transact the international business of his government at the court of the country to which he is sent.

The commissioner who represents one country in the seat of government of another. He is a public minister, which, usually, a consul is not. Brown. A person sent by one sovereign to another, with authority, by letters of credence, to treat on affairs of state. Jacob. The personal representatives of the head of the state which sends them,

entitled to special honors and special privileges and having varied duties; mouthpiece of communications, government informant, and protector of citizens of his country. Russian Government v. Lehigh Valley R. Co., D.C.N.Y., 293 F. 133. See Letter of Credence; Minister.

A distinction was formerly made between Ambassadors Extraordinary, who were sent to conduct special business or to remain for an indeterminate period, and Ambassadors *Ordinary,* who were sent on permanent missions; but this distinction is no longer observed.

AMBER, or AMBRA. In old English law, a measure of four bushels.

AMBEDEXTER. Skillful with both hands; one who plays on both sides. Applied anciently to an attorney who took pay from both sides, and subsequently to a juror guilty of the same offense. Cowell.

AMBIGUA RESPONSIO CONTRA PROFERENTEM EST ACCIPIENDA. An ambiguous answer is to be taken against (is not to be construed in favor of) him who offers it. 10 Coke, 59.

AMBIGUIS CASIBUS SEMPER PRLESUMITUR PRO REGE. In doubtful cases, the presumption always is in behalf of the crown. Lofft, Append. 248.

A1ti1BIG1UITAS. Lat. From *ambiguus,* doubtful, uncertain, obscure. Ambiguity; uncertainty of meaning.

*Ambiguitas latens,* a latent ambiguity; *ambiguitas patens,* a patent ambiguity. See Ambiguity.

AMBIGUITAS CONTRA STIP1ULATOREM EST. Doubtful words will be construed most strongly against the party using them.

AMBIGUITAS VERBORUM LATENS VERWICATIONE SUPPLETUR; NAM QUOD EX FACTO ORITUR AMBIGUUM VERIFICATIONE FACTI TOLLITUR. A latent ambiguity in the language may be removed by evidence; for whatever ambiguity arises from an extrinsic fact may be explained by extrinsic evidence. Bac.Max.Reg. 23. Said to be "an unprofitable subtlety; inadequate and uninstructive." Prof. J. B. Thayer in 6 Harv. L. 417.

AMBIGUITAS VERBORUM PATENS NULLA VERIFICATIONE EXCLUDITUR. A patent ambiguity cannot be cleared up by extrinsic evidence (or is never holpen by averment). Lofft, 249; Bacon, Max. 25.

AMBIGUITY. Doubtfulness; doubleness of meaning. Chapman v. Metropolitan Life Ins. Co., 172 S.C. 250, 173 S.E. 801, 803. Duplicity, indistinctness, or uncertainty of meaning of an expression used in a written instrument. Arkansas Amusement Corporation v. Kempner, C.C.A.Ark., 57 F. 2d 466, 472. Want of clearness or definiteness., difficult to comprehend or distinguish; of doubtful import. Business Men's Assur. Ass'n v. Read, Tex.Civ.App., 48 S.W.2d 678, 680. For "Extrinsic Ambiguity," see that title.

Ambiguity of language is to be distinguished from unintelligibility and inaccuracy, for words cannot be said to be ambiguous unless their signification seems doubtful and uncertain to persons of competent skill and knowledge to under6tand them. Story, Contr. 272. It does not include uncertainty arising from the use of peculiar words, or of common words in a peculiar sense. Wig. Wills, 174; In re Milliette's Estate, 206 N.Y.S. 342, 349, 123 Misc.Rep. 745. It is *latent* where the language employed is clear and intelligible and suggests but a single meaning, but some extrinsic fact or extraneous evidence creates a necessity for interpretation or a choice among two or more possible meanings, as where a description apparently plain and unambiguous is shown to fit different pieces of property. Logue v. Von Almen, 379 Ill. 208, 40 N.E.2d 73, 82, 140 A.L.R. 251. A *patent* ambiguity is that which appears on the face of the instrument, and arises from the defective, obscure, or insensible language used. Carter v. Holman, 60 Mo. 504; Stokeley v. Gordon, 8 Md. 505; Carroll v. Cave Hill Cemetery Co., 172 Ky. 204, 189 S.W. 186, 190.

AMBIGUITY UPON THE FACTUM. An ambiguity in relation to the very foundation of the instrument itself, as distinguished from an ambiguity in regard to the construction of its terms.

The term is applied, for instance, to a doubt as to whether a testator meant a particular clause to be a part of the will, or whether it was introduced with his knowledge, or whether a codicil was meant to republish a former will, or whether the residuary clause was accidentally omitted. Eatherly v. Eatherly, 1 Cold., Tenn., 461, 465, 78 Am. Dec. 499.

AMBIGUUM PACTUM CONTRA VENDITOREM INTERPRETANDUM EST. An ambiguous contract is to be interpreted against the seller.

AMBIGUUM PLACITUM INTERPRETARI DEBET CONTRA PROFERENTEM. An ambiguous plea ought to be interpreted against the party pleading it. Co.Litt. 303b.

AMBIT. A boundary line, as going around a place; an exterior or inclosing line or limit. Ellicott v. Pearl, 10 Pet., U.S., 412, 442, 9 L.Ed. 475.

The limits or circumference of a power or jurisdiction; the line circumscribing any subject-matter. As to the ambit of a port, see Leonis Steamship Co.; Ltd., v. Rank, Ltd., [1907] 1 K.B. 344, 352; Pyman Bros. v. Dreyfus Bros. & Co. [1890] 24 Q.B.D. 152, 155.

AMBITUS. In the Roman law, a going around; a path worn by going around. A space of at least two and a half feet in width, between neighboring houses, left for the convenience of going around them. Calvin.

The procuring of a public office by money or gifts; the unlawful buying and selling of a public office. Inst. 4, 18, 11; Dig. 48, 14.

AMBLOTIC. Having the power to cause abortion; anything used to produce abortion.

AMBULANCE. A vehicle for the conveyance of the sick or wounded. In time of war they are considered neutral and must be respected by the belligerents. Oppenheim, Int.L. 126.

AMBULANCE CHASER. A lawyer or his agent who follows up accidents in the streets and tries to induce the injured person to sue for damages. Kelley v. Boyne, 239 Mich. 204, 214 N.W. 316, 318, 53 A.L.R. 273.

A popular name for one who solicits negligence cases for an attorney. In re Newell, 160 N.Y.S. 275, 278, 174 App. Div. 94. One seeking out persons and directing them tx) an attorney in consideration of a percentage of the recovery. In re Mitgang, 385 Ill. 52 N.E.2d 807, 816.

AMBULANCE CHASING. A term descriptive of the practice of some attorneys, on hearing of a personal injury which may have been caused by the negligence or wrongful act of another, of at once seeking out the injured person with a view to securing authority to bring action on account of the injury. Chunes v. Duluth, W. & P. Ry. Co., D.C.Minn., 298 F. 964. Laymen's acquainting themselves with occurrence of accidents and approaching injured persons or their representatives with a view toward soliciting employment for an attorney in the litigation arising from the accident State ex rel. Wright v. Hinckle, 137 Neb. 735, 291 N.W. 68, 72.

AMBULATORIA EST VOLUNTAS DEFUNCT! USQUE AD VITAE SUPREMUM EXITUIVI. The will of a deceased person is ambulatory until the latest moment of life. Dig. 34, 4, 4.

AMBULATORY. (Lat. ambulare, *to* walk about). Movable; revocable; subject to change.

*Ambulatoria voluntas* (a changeable will) denotes the power which a testator possesses of altering his will during his life-time. Hattersley v. Bissett, 50 N.J.Eq. 577, 25 Atl. 332.

*Courts.* The court of king's bench in England was formerly called an ambulatory court, because it followed the king's person, and was held sometimes in one place and sometimes in another. So, in France, the supreme court or parliament was originally ambulatory. 3 Bl.Comm. 38, 39, 41.

A *sheriff's return* has been said to be ambulatory until it is filed. Wilmot, J., 3 Burr. 1644.

AMBUSH. The noun "ambush" means (1) the act of attacking an enemy unexpectedly from a concealed station; (2) a concealed station, where troops or enemies lie in wait to attack by surprise, an ambuscade; (3) troops posted in a concealed place for attacking by surprise. The verb "ambush" means to lie in wait, to surprise, to place in ambush. Dale County v. Gunter, 46 Ala. 118, 142, referred to in Darneal v. State, 14 Okl.Cr. 540, 174 P. 290, 292, 1 A.L.R. 638.

AMELIORATING WASTE. An act of lessee, though technically constituting waste, yet in fact resulting in improving instead of doing injury to land. J. H. Bellows Co. v. Covell, 28 Ohio App. 277, 162 N.E. 621, 622.

AMELIORATIONS. Betterments; improvements. 6 Low.Can. 294; 9 Id. 503.

AMENABLE. Subject to answer to the law; accountable; responsible; liable to punishment. Pickelsimer v. Glazener, 173 N.C. 630, 92 S.E. 700, 704.

Also means tractable, that may be easily led or governed; formerly applied to a wife who is governable by her husband. Cowell.

AMEND. To improve. To change for the better by removing defects or faults. Cross v. Nee, D.C. Mo., 18 F.Supp. 589, 594. To change, correct, revise. Texas Co. v. Fort, 168 Tenn. 679, 80 S.W.2d 658, 660.

AMENDE HONORABLE. An apology.

In old English law, it was a penalty imposed upon a person by way of disgrace or infamy, as a punishment for any offense, or for the purpose of making reparation for any injury done to another, as the walking into church in a white sheet, with a rope about the neck and a torch in the hand, and begging the pardon of God, or the king, or any private individual, for some delinquency.

A punishment somewhat similar to this, which bore the same name, was common in France for offenses against public decency or morality. It was abolished by the law of the 25th of September, 1791; Merlin, Rêpert. In 1826 it was re-introduced in cases of sacrilege and was finally abolished in 1830.

AMENDMENT. A change, ordinarily for the better. Musher v. Perera, 162 Md. 44, 158 A. 14, 15. An amelioration of the thing without involving the idea of any change in substance or essence. Van Deusen v. Ruth, 343 Mo. 1096, 125 S.W.2d 1, 3.

Any writing made or proposed as an improvement of some principal writing. Ex parte Woo Jan, D.C.Ky., 228 F. 927, 941; Couch v. Southern Methodist University, Tex.Civ.App., 290 S.W. 256, 260.

In *legislation,* it is a modification or alteration proposed to be made in a bill on its passage, or an enacted law; also such modification or change when made. Brake v. Callison, C.C.Fla., 122 Fed. 722; State v. MacQueen, 82 W.Va. 44, 95 S.E. 666, 668.

It *is* to be distinguished from a "substitute for a bill." In re Ross, 86 N.J.Law, 387, 94 A. 304, 306. It *is* an alteration in the law already existing, leaving some part of the original still standing. State ex inf. Crain ex rel. Peebles v. Moore, 339 Mo. 492, 99 S.W.2d 17, 19. To effect an improvement or better carry out the purpose for which statute was framed. State ex rel. Foster v. Evatt, 144 Ohio St. 65, 56 N.E.2d 265, 282. And it includes additions to, as well as corrections of, matters already treated. Christian Feigenspan, Inc., v. Bodine, D.C.N.J., 264 F. 186, 190. See, also, State v. Fulton, 99 Ohio St. 168, 124 N.E. 172, 175.

In *practice* it is the correction of error committed in progress of a cause. Lintott v. McCluskey, 105 N.J.Eq. 354, 148 A. 161, 164. The correction of an error committed in any process, pleading, or proceeding at law, or in equity, and which is done either of course, or by the consent of parties, or upon motion to the court in which the proceeding is pending. 3 Bl.Comm. 407, 448; 1 Tidd, Pr. 696. Hardin v. Boyd, 113 U.S. 756, 5 Sup.Ct. 771, 28 L. Ed. 1141.

An amendment to a pleading, as distinguished from a "supplemental pleading" ( *q. v.),* has reference to facts existing at the time of the commencement of the action. Fisher v. Bullock, 198 N.Y.S. 538, 540, 204 App. Div. 523. And it is the correction of some error or mistake in a pleading already before the court. Pantaleo v. Colt's Patent Fire Arms Mfg. Co., D.C.N.Y., 13 F.Supp. 989, 990.

AMENDS. A satisfaction given by a wrongdoer to the party injured, for a wrong committed. 1 Lil.Reg. 81.

AMENITY. In real property law, such circumstances, in regard to situation, outlook, access to a water course, or the like, as enhance the pleasantness or desirability of an estate for purposes of residence, or contribute to the pleasure and enjoyment of the occupants, rather than to their indispensable needs.

In England, upon the building of a railway or the construction of other public works, "amenity damages" maY be given for the defacement of pleasure grounds, the impairment of riparian rights, or other destruction of or injury to the amenities of the estate.

In the law of *easements*, an "amenity" consists in restraining the owner from doing that with and on his property which, but for the grant or covenant, he might lawfully have done; sometimes called a "negative easement" as distinguished from that class of easements which compel the owner to suffer something to be done on his property by another. Equitable Life Assur. Soc. v. Brennan, 30 Abb.N.C. 260, 24 N.Y.Supp. 784, 788. A restrictive covenant. South Buffalo Stores v. W. T. Grant Co., 274 N.Y.S. 549, 555, 153 Misc. 76.

AMENS. See Demens.

AMENTIA. Insanity; idiocy. See Insanity.

AMERALIUS. L. Lat. A naval commander, under the eastern Roman empire, but not of the highest rank; the origin, according to Spelman, of the modern title and office of admiral. Spelman.

AMERCE. To impose an amercement or fine; to punish by a fine or penalty.

AMERCEMENT. A pecuniary penalty, in the nature of a fine, imposed upon a person for some fault or misconduct, he being "in mercy" for his offense. It was assessed by the peers of the delinquent, or the affeerors, or imposed arbitrarily at the discretion of the court or the lord. Goodyear v. Sawyer, C.C.Tenn., 17 Fed. 9.

The difference between *amercements* and *fines* is as follows : The latter are certain, and are created by some statute ; they can only be imposed and assessed by courts of record; the former are arbitrarily imposed. Termes de la Ley, 40.

The word "amercement" has long been especially used of a mulct or penalty, imposed by a court upon its own officers for neglect of duty, or failure to pay over moneys collected. In particular, the remedy against a sheriff for failing to levy an execution or make return of proceeds of sale is, in several of the states, known as "amercement." In others, the same result is reached by process of attachment. Abbott. Stansbury v. Mfg. Co., 5 N.J.Law, 441.

AMERCEMENT ROYAL. In Great Britain a penalty imposed on an officer for a misdemeanor in his office.

AMERICAN. Pertaining to the western hemisphere or in a more restricted sense to the United States. See Beardsley v. Selectmen of Bridgeport, 53 Conn. 493, 3 A. 557, 55 Am.Rep. 152. It was assumed in Life Photo Film Corp. v. Bell, 90 Misc.Rep. 469, 154 N.Y.S. 763, 764, that the term "American" included all classes of citizens, native and naturalized, irrespective of where they originally came from.

AMERICAN AGENCY SYSTEM. Its purport is that upon termination of an insurance agency, if the agent's financial obligations to the insurer are paid in full, all rights in the expiration data of existing insurance procured by the agent belong to him. Woodruff v. Auto Owners Ins. Co., 300 Mich. 54, 1 N.W.2d 450, 453.

AMERICAN CLAUSE. In marine insurance, a proviso in a policy to the effect that, in case of any subsequent insurance, the insurer shall nevertheless be answerable for the full extent of the sum subscribed by him, without right to claim contribution from subsequent underwriters. American Ins. Co. v. Griswold, 14 Wend., N.Y., 399.

AMERICAN EXPERIENCE TABLE OF MORTALITY. A series of tables dealing with life insurance, costs and values, varying according to the age of the insured, the period during which the policy has been in force, and the term of the particular policy. Horton v. Atlantic Life Ins. Co., 187 S.C. 155, 197 S.E. 512, 514, 116 A.L.R. 788.

AMEUBLISSEMENT. In French law, a species of agreement which by a fiction gives to immovable goods the quality of movable. Merl. Rêpert., 1 Low.Can. 25, 58.

AMI; AMY. A friend; as *alien ami,* an alien belonging to a nation at peace with us; *prochein ami,* a next friend suing or defending for an inf ant, married woman, etc.

AMICABLE. Friendly; mutually forbearing; agreed or assented to by parties having conflicting interests or a dispute; as opposed to hostile or adversary.

AMICABLE ACTION. An action brought and carried on by the mutual consent and arrangement of the parties, to obtain judgment of court on a doubtful question of law, the facts being usually settled by agreement. Lord v. Veazie, 8 How. 251, 12 L.Ed. 1067. See Case Stated.

AMIABLES COMPOSITEURS. See Amicable Compounders.

AMICABLE COMPOUNDERS. In Louisiana law and practice, amicable compounders are arbitrators authorized to abate something of the strictness of the law in favor of natural equity.

AMICABLE SCIRE FACIAS TO REVIVE A JUDGMENT. A written agreement, signed by the person to be bound by the revival, in the nature of a writ of scire facias with a confession of judgment thereon, which must be duly docketed, but which requires no judicial action on the part of the court, and which has the force and effect of a judgment rendered upon an adverse or contested writ of scire facias. Second Nat. Bank, for Use of Federal Reserve Bank of Philadelphia, v. Faber, 332 Pa. 124, 2 A.2d 747, 749.

AMICUS CURVE, Lat. A friend of the court.

A by-stander (usually a counsellor) who interposes and volunteers information upon some matter of law in regard to which the judge is doubtful or mistaken, Fort Worth & D. C. Ry. Co. v. Greathouse, Tex.Civ.App., 41 S.W.2d 418, 422; or upon a matter of which the court may take judicial cognizance. The Claveresk, C.C.A.N.Y., 264 F. 276, 279; In re Perry, 83 Ind. App. 456, 148 N.E. 163, 165. Implies friendly intervention of counsel to remind court of legal matter which has escaped its notice, and regarding which it appears to be in danger of going wrong. Blanchard v. Boston & M. R., 86 N.H. 263, 167 A. 158, 160.

Also a person who has no right to appear in a suit but is allowed to introduce argument, authority, or evidence to protect his interests. Ladue v. Goodhead, 181 Misc. 807, 44 N.Y.S.2d 783, 787.

AMIRAL. Fr. In French maritime law, admiral. Ord. de la Mar. liv. 1, tit. 1, § 1.

.NMITA. Lat. An aunt on the father's side. *Amita magna.* A great-aunt on the father's side. *Amita major.* A great-great aunt on the father's side. *Amita maxima.* A great-great-great aunt, or a great-great-grandfather's sister. Calvinus, Lex.

AMITINUS. The child of a brother or sister; a cousin; one who has the same grandfather, but different father and mother. Calvinus, Lex.

AMITTERE. Lat. In the civil and old English law, to lose. Hence the old Scotch "amitt."

AMITTERE CURIAM. To lose the court; to be deprived of the privilege of attending the court.

AMITTERE LEGEM TERRIE. To lose the protection afforded by the law of the land.

AMITTERE LIBERAM LEGEM. To lose one's frank-law.

A term having the same meaning as *amittere legem terce, (q. v.)* He who lost his law lost the protection extended by the law to a freeman, and became subject to the same law as thralls or serfs attached to the land.

To lose the privilege of giving evidence under oath in any court; to become infamous, and incapable of giving evidence. Glanville 2. If either party in a wager of battle cried "craven" he was condemned *amittere liberam legem;* 3 Bla.Com. 340.

AMNESIA. Loss of memory.

AMNESTY. A sovereign act of oblivion for past acts, granted by a government to all persons (or to certain persons) who have been guilty of crime or delict, generally political offenses,—treason, sedition, rebellion,—and often conditioned upon their return to obedience and duty within a prescribed time.

A general pardon or proclamation of such pardon from subjects' offenses against the government; while usually exerted in behalf of certain classes of persons, subject to trial, but not convicted, it is not confined to such cases. Commonwealth v. Hamburg Magistrate, 104 Pa.Super. 221, 158 A. 629, 631.

A declaration of the person or persons who have newly acquired or recovered the sovereign power in a state, by which they pardon all persons who composed, supported, or obeyed the government which has been overthrowti.

The word "amnesty" properly belongs to international law, and is applied *to treaties of peace following a state of war, and signifies there the burial in oblivion of the particular cause of strife, so that that shall not be again a cause for war between the parties; and this signification of "amnesty" is fully and poetically expressed in the Indian custom of burying the hatchet. And so amnesty is applied to rebellions which by their magnitude are brought within the rules of international law. It means only "oblivion," and never is a grant. Knote v. U. S., 10 Ct.C1. 407.

Amnesty is the abolition and forgetfulness of the offense; pardon is forgiveness. Knote v. U. S., 95 U.S. 149, 152, 24 L.Ed. 442. The first is usually addressed to crimes against the sovereignty of the state, to political offenses; the second condones infractions of the peace of the state. Burdick v. United States, 236 U.S. 79, 35 S.Ct. 267, 271, 59 L.Ed. 476.

*Express amnesty is* one granted in direct terms.

*Implied amnesty* is one which results when a treaty of peace is made between contending parries. Vattel, 1, 4, c. 2, § 20.

AMONG. Mingled with or in the same group or class. Dwight Mfg. Co. v. Word, 200 Ala. 221, 75 So. 979, 983, Genung v. Best, 100 N.J.Eq. 250, 135 A. 514, 516. Intermingled with. Eddings v. Southern Dairies, D.C.S.C., 42 F.Supp. 664, 666.

Commerce *among* the states cannot stop at the external boundary line of each state. Gibbons *v.* Ogden, 9 Wheat. 194, 6 L.Ed. 23; Ft. Smith & W. R. Co. v. Blevins, 35 Okl. 378, 130 P. 525, 529. Where property is directed by will to be distributed *among* several persons, it cannot be all given to one, nor can any of the persons be wholly excluded from the distribution. Hudson *v.* Hudson, 6 Munf., Va., 352.

"Among" is sometimes held to be equivalent to "between" ; Hick's Estate, 134 Pa. 507, 19 A. 705; Records v. Fields, 155 Mo. 314, 55 S.W. 1021. But "among" implies more than two objects as differentiated with "between." St. Louis Union Trust Co. v. Little, 320 Mo. 1058, 10 S.W.2d 47, 53.

AMORTISE. See Amortize.

AMORTISSEMENT. (Fr.) The redemption of a debt by a sinking fund.

AMORTIZATION. An alienation of lands or tenements in mortmain. The reduction of the property of lands or tenements to mortmain.

In its modern sense, amortization is the operation of paying off bonds, stock, a mortgage, or other indebtedness, commonly of a state or corporation, by installments, or by a sinking fund. An "amortization plan" for the payment of an indebtedness is one where there are partial payments of the principal, and accrued interest, at stated periods for a definite time, at the expiration of which the entire indebtedness will be extinguished. Bystra v. Federal Land Bank of Columbia, 82 Fla. 472, 90 So. 478, 480; Applestein v. Royalty Realty Corporation, 181 Md. 171, 28 A.2d 830, 831.

AMORTIZE. To alien lands in mortmain.

To destroy, kill, or deaden. Elliott v. U. S., D.C.Me., 16 F.2d 164, 165. See Amortization.

AMOTIO. In the civil law, a moving or taking away. "The slightest *amotio is* sufficient to constitute theft, if the *animus furandi* be clearly established." 1 Swint. 205. See Amotion.

AMOTION. A putting or turning out; dispossession of lands. Ouster is an *amotion* of possession. 3 Bl.Comm. 199, 208.

A moving or carrying away; the wrongful taking of personal chattels. Archb.Civil PLIntrod. 2, § 3.

In *corporation law,* the act of removing an officer, or official representative, of a corporation from his office or official station, before the end of the term for which he was elected or appointed, but without depriving him of membership in the body corporate. In this last respect the term differs from "disfranchisement," or expulsion. Richards v. Clarksburg, 30 W.Va. 491, 4 S.E. 774; In re Koch, 257 N.Y. 318, 178 N.E. 545, 546.

AMOUNT. The effect, substance, or result; the total or aggregate sum. Hilburn v. Railroad Co., 23 Mont. 229, 58 P. 551.

The sum of principal and interest, McCabe v. Cary's Ex'rs, 135 Va. 428, 116 S.E. 485, 491. But see In re Stoneman, Sur., 146 N.Y.S. 172, 175 (interest excluded). See, also, Candelaria v. Gutierrez, 28 N.M. 434, 213 P. 1037, holding that the "amount of judgment" within a statute requiring a bond for supersedeas does not include interest or costs.

AMOUNT COVERED. In insurance, the amount that is insured, and for which underwriters are liable for loss under a policy of insurance.

AMOUNT IN CONTROVERSY. The damages claimed or relief demanded; the amount claimed or sued for. Glenwood Light & Water Co. v. Mutual Light, Heat & Power Co., 239 U.S. 121, 36 S.Ct. 30, 60 L.Ed. 174; Smith v. Giles, 65 Tex, 341; Wabash Ry. Co. v. Vanlandingham, C.C.A.Mo., 53 F.2d 51.

Value of property. Peterson v. Sucro, C.C.A.N.C., 93 F.2d 878, 114 A.L.R. 890. Value of the property interest in trade-name. Beneficial Industrial Loan Corporation v. Kline, C.C.A.Iowa, 132 F.2d 520, 525. Value of the object sought to be gained by the suit. Boesenberg v. Chicago Title & Trust Co., C.C.A.I11., 128 F.2d 245, 246. Aggregate amount of all causes of action properly joined in action at law. Firestone Tire & Rubber Co. v. Brent, D.C.N.Y., 2 F.Supp. 425, 426. Contra. Plaintiffs' claims could not be aggregated for jurisdictional purposes. Independence Shares Corporation v. Deckert, C.C.A.Pa., 108 F.2d 51, 53.

AMOUNT IN DISPUTE. Value in money of the relief prayed for. Finley v. Smith, Mo.App., 170 S.W.2d 166, 170; or sought but denied, Bushnell v. Mississippi & Fox River Drainage Dist. of Clark County, 340 Mo. 811, 102 S.W.2d 871, 873, and includes value of thing in contest where a thing, instead of an amount, is in dispute. Noel Estate V. Louisiana Oil Refining Corporation, La.App., 170 So. 272, 273.

AMOUNT OF LOSS. In insurance, the diminution, destruction, or defeat of the value of, or of the charge upon, the insured subject to the assured, by the direct consequence of the operation of the risk insured against, according to its value in the policy, or in contribution for loss, so far as its value is covered by the insurance.

AMOUNT TO. To reach in the aggregate, to rise to or reach by accumulation of particular sums or quantities. Peabody v. Forest Preserve District of Cook County, 320 Ill. 454, 151 N.E. 271, 274.

AMOVE. To remove from a post or station. 3 C.J.S. p. 1059.

AMOVEAS MANUS. Lat. That you remove your hands.

After office found, the king was entitled to the things forfeited, either lands or personal property; the remedy for a person aggrieved was by "petition," or *"monstrans de droit,"* or *"traverses,"* to establish his superior right. Thereupon a writ issued, *quod manus domini regis amoveantur.* 3 Bl.Comm. 260.

AMPARO. In Spanish-American law, a document issued to a claimant of land as a protection to him, until a survey can be ordered, and the title of possession issued by an authorized commissioner. Trimble v. Smither's Adm'r, 1 Tex. 790.

AMPLIATION. Action of judge in merely deferring the cause for further examination constitutes "ampliation," practice in such instances being for judge to make the usual notation of non liquet. Sonnier v. Sonnier, 14 La.App. 588, 130 So. 133, 135.

In *civil law,* a deferring of judgment until a cause be further examined. Calvin.; Cowell. An order for the rehearing of a cause on a day appointed, for the sake of more ample information. Halifax, Anal. b. 3, c. 13, n. 32.

In this case, the judges pronounced the word *amplius,* or by writing the letters N. L. for non *liquet (q. v.),* signifying that the cause was not clear. It is very similar to the common-law practice of entering cur. *adv. vult* in similar cases.

In *French law,* a duplicate of an acquittance or other instrument. A notary's copy of acts passed before him, delivered to the parties.

AMPLIUS. In the Roman law, more; further; more time.

A word which the praetor pronounced in cases where there was any obscurity in a cause, and the *judices* were uncertain whether to condemn or acquit; by which the case was deferred to a day named. Adam, Rom. Ant. 287.

AMPUTATION OF RIGHT HAND. An ancient punishment for a blow given in a superior court; or for assaulting a judge, sitting in the court.

AMUSEMENT. Pastime; diversion; enjoyment.

A pleasurable occupation of the senses, or that which furnishes it." Young v. Board of Trustees of Broadwater County High School, 90 Mont. 576, 4 P.2d 725, 726,

AMY. See Ami; Prochein Ami.

AN. The English indefinite article. Equivalent to "one" or "any"; seldom used to denote plurality. Kaufman v. Superior Court, 115 Cal. 152, 46 Pac. 904.

AN ET JOUR. Fr. Year and day; a year and a day.

AN, JOUR, ET WASTE. In feudal law, year, day, and waste. A forfeiture of the lands to the crown incurred by the felony of the tenant, after which time the land escheats to the lord. Termes de la Ley, 40. See Year, Day, and Waste.

ANACRISIS. In the civil law, an investigation of truth, interrogation of witnesses, and inquiry made into any fact, especially by torture.

ANAESTHESIA. In medical jurisprudence. (1) Loss of sensation, or insensibility to pain, general or local, induced by the administration or application of certain drugs such as ether, nitrous oxide gas, or cocaine. (2) Defect of sensation, or more or less complete insensibility to pain, existing in various parts of the body as a result of certain diseases of the nervous system.

ANAGRAPH. A register, inventory, or commentary.

ANALOGOUS. Derived from the Greek ana, up, and logos, ratio. Means bearing some resem-

blance. Irving v. Kerlow Steel Flooring Co., D.C. N.J., 25 F.Supp. 901, 902.

If elements and purposes of one art are so related and similar to those of another as to make an appeal to one skilled in such art, the two arts are "analogous". Copeman Laboratories Co. v. General Plastics Corp., C.C.A.Ill., 149 F.2d 962, 963.

ANALOGY. In logic. Identity or similarity of proportion.

Where there is no precedent in point, in cases on the same subject, lawyers have recourse to cases on a different subject-matter, but governed by the same general principle. This is reasoning by analogy. Wharton.

The similitude of relations which exist between things compared. See Smith v. State, 63 Ala. 58.

"Analogy" does not mean identity, but implies a difference. Sturm v. Ulrich, C.C.A.Okl., 10 F.2d 9, 11.

ANALYTICAL JURISPRUDENCE. A theory and system of jurisprudence wrought out neither by inquiring for ethical principles or the dictates of the sentiments of justice nor by the rules which may be actually in force, but by analyzing, classifying and comparing various legal conceptions. See Jurisprudence.

ANAPHRODISIA. In medical jurisprudence, impotentia cceundi; frigidity; incapacity for sexual intercourse existing in' either man or woman, and in the latter case sometimes called "dyspareunia."

ANARCHIST. One who professes and advocates the doctrines of anarchy, *q.* v. And see Cerveny v. Chicago Daily News Co., 139 Ill. 345, 28 N.E. 692, 13 L.R.A. 864. In the immigration statutes, it includes, not only persons who advocate the overthrow of organized government by force, but also those who believe in the absence of government as a political ideal, and seek the same end through propaganda. Ex parte Caminita, D.C.N.Y., 291 F. 913, 915.

ANARCHY. Absence of government; state of society where there is no law or supreme power; lawlessness or political disorder; destructive of and confusion in, government. People v. Mintz, 106 Cal.App. 725, 290 P. 93, 98.

At its best it pertains to a society made orderly by good manners rather than law, in which each person produces according to his powers and receives according to his needs, and at its worst, the word pertains to a terroristic resistance of all present government and social order. State v. Schleifer, 102 Conn. 708, 130 A. 184, 188.

*Criminal anarchy* as the doctrine that organized government should be overthrown by force, or by assassination of executive officers, or by any unlawful means. See People *v.* Gitlow, 183 N.Y.S. 846, 847, 111 Misc.Rep. 641, and 15 Rep. Am. Bar Assn. 210.

ANATHEMA. An ecclesiastical punishment by which a person is separated from the body of the church, and forbidden all intercourse with the members of the same.

It differs from excommunication, which simply forbids the person excommunicated from going into the church and taking the communion with the faithful.

ANATHEMATIZE. To pronounce anathema upon; to pronounce accursed by ecclesiastical authority; to excommunicate. See Anathema.

ANATOCISM. In the civil law, repeated or doubled interest; compound interest; usury. Cod. 4, 32, 1, 30.

ANCESTOR. One from whom a person lineally descended or may be descended; a progenitor. Russell v. Roberts, 54 Ohio App. 441, 7 N.E.2d 811, 814.

A former possessor; the person last seised. Termes de la Ley; 2 Bl.Comm. 201. A deceased person from whom another has inherited land. Bailey v. Bailey, 25 Mich. 185; McCarthy v. Marsh, 5 N.Y. 275.

For example, a child may be the "ancestor" of his parent, and an infant brother, the "ancestor" of an adult brother. Embraces collaterals as well as lineals. Purcell v. Sewell, 223 Ala. 73, 134 So. 476, 480. Correlative of "heir." In re Long's Estate, 180 Okl. 28, 67 P.2d 41, 43, 110 A.L.R. 1002.

The term differs from "predecessor," in that it is applied to a natural person and his progenitors, while the latter is applied also to a corporation and those who have held *offices* before those who now fill them. Co. Litt. 78b. "Ancestor" may embrace both lineals and collaterals, Cornell v. Child, 170 App.Div. 240, 156 N.Y.S. 449, 452, or both testator and testatrix, Pfaffenberger v. Pfaffenberger, 189 Ind. 507, 127 N.E. 766, 767; it may also be limited to mean immediate ancestor, In re Simpson's Estate, Sur., 144 N.Y.S. 1099, 1101.

ANCESTRAL. Relating to ancestors, or to what has been done by them; as *homage ancestral (q. v.).* Derived from ancestors.

*Ancestral estates* are such as are transmitted by descent, and not by purchase. 4 Kent, Comm. 404. Brown v. Whaley, 58 Ohio St. 654, 49 N.E. 479, 65 Am.St.Rep. 793. Or such as are acquired either by descent or by operation of law. Gray v. Chapman, 122 Okl. 130, 243 P. 522, 525. Realty which came to the intestate by descent or devise from a now dead ancestor or by deed of actual gift from a living one, there being no other consideration than that of blood. In re Long's Estate, 180 Okl. 28, 67 P.2d 41, 50, 110 A.L.R. 1002. Real estate coming to distributee by descent, gift, or devise from any kinsman. Ward v. Ives, 91 Conn. 12, 98 A. 337, 339. Allotments to members of Indian tribes or their heirs have been treated as an ancestral estate. Sims v. Brown, 46 Okl. 767, 149 P. 876, 877; McDougal v. McKay, 237 U.S. 372, 35 S.Ct. 605, 607, 59 L.Ed. 1001.

ANCHOR. A measure containing ten gallons.

The instrument used by which a vessel or other body is held. See Walsh v. Dock Co., 77 N.Y. 448; Reid v. Ins. Co., 19 Hun, N.Y., 284.

ANCHOR WATCH. A watch, consisting of a small number of men, (from one to four,) kept constantly on deck while the vessel is riding at single anchor, to see that the stoppers, painters, cables, and buoy-ropes are ready for immediate use. The Lady Franklin, 2 Lowell, 220, Fed.Cas. No.7,984. The lookout intrusted to one or two men when a vessel is at anchor. O'Hara v. Luckenbach S. S. Co., 269 U.S. 364, 46 S.Ct. 157, 160, 70 L.Ed. 313.

ANCHORAGE. In English law, a prestation or toll for every anchor cast from a ship in a port; and sometimes, though there be no anchor. Hale, de Jure Mar. pt. 2, c. 6. See 1 W.B1. 413 et seq.; 4 Term. 262.

ANCIENT. Old; that which has existed from an indefinitely early period, or which by age alone has acquired certain rights or privileges accorded in view of long continuance.

ANCIENT DEED. A deed 30 years old and shown to come from a proper custody and having nothing suspicious about it. Davis v. Wood, 161 Mo. 17, 61 S.W. 695.

ANCIENT DEMESNE. Manors which in the time of William the Conqueror were in the hands of the crown, and are so recorded in the Domesday Book. Fitzh.Nat.Brev. 14, 56; Baker v. Wich, 1 Salk. 56.

Also a species of copyhold, which differs, however, from common copyholds in certain privileges, but yet must be conveyed by surrender, according to the custom of the manor.

There are three sorts : (1) Where the lands are held freely by the king's grant; (2) customary freeholds, which are held of a manor in ancient demesne, but not at the lord's will, although they are conveyed by surrender, or deed and admittance; (3) lands held by copy of court-roll at the lord's will, denominated copyholds of base tenure.

Tenure in *ancient demesne* may be pleaded in abatement to an action of ejectment. Rust v. Roe, 2 Burr. 1046.

ANCIENT DOCUMENTS. See Ancient Writings.

ANCIENT HOUSE. One which has stood long enough to acquire an easement of support against the adjoining land or building. 3 Kent, Comm. • 437; 2 Washb.Real Prop. 74, 76.

In England this term is applied to houses or buildings erected before the time of legal memory, (Cooke, Incl. Acts, 35, 109,) that is, before the reign of Richard I., although practically any house is an ancient messuage if it was erected before the time of living memory, and its origin cannot be proved to be modern.

ANCIENT LIGHTS. Lights or windows in a house, which have been used in their present state, without molestation or interruption, for twenty years, and upwards.

To these the owner of the house has a right by prescription or occupancy, so that they cannot be obstructed or closed by the owner of the adjoining land which they may overlook. Wright v. Freeman, 5 Har. & J., Md., 477; Story v. Odin, 12 Mass. 160, 7 Am.Dec. 81.

ANCIENT READINGS. Readings or lectures upon the ancient English statutes, formerly regarded as of great authority in law. Litt. § 481; Co. Litt. 280.

ANCIENT RECORDS. See Ancient Writings.

ANCIENT RENT. The rent reserved at the time the lease was made, if the building was not then under lease. Orby v. Lord Mohun, 2 Vern. 542.

ANCIENT SERJEANT. In English law, the eldest of the queen's serjeants.

ANCIENT STREET. The doctrine is not based upon fact that streets have existed for a long time, but is invoked when it appears that common grantor owning land comprising street in question as well as property in question and other lots has given deeds to lots bounding them by street, thereby not only dedicating the street to public use but at same time creating private easements in the street, which cannot be taken without compensation. Dwornick v. State, 251 App.Div. 675, 297 N.Y.S. 409, 411.

ANCIENT WALL. A wall built to be used, and in fact used, as a party-wall, for more than twenty years, by the express permission and continuous acquiescence of the owners of the land on which it stands. Eno v. Del Vecchio, 4 Duer, N. Y., 53, 63. Schneider v. 44-84 Realty Corporation, 169 Misc. 249, 7 N.Y.S.2d 305, 309.

ANCIENT WATER COURSE. A water course is "ancient" if the channel through which it naturally runs has existed from time immemorial independent of the quantity of water which it discharges. Earl v. De Hart, 12 N.J.Eq. 280, 72 Am. Dec. 395.

ANCIENT WRITINGS. Documents bearing on their face every evidence of age and authenticity, of age of 30 years, and coming from a natural and reasonable official custody. Hartzell v. U. S., C. C.A.Iowa, 72 F.2d 569, 579.

These are presumed to be genuine without express proof, when coming from the proper custody. Jones v. Scranton Coal Co., 274 Pa. 312, 118 A. 219. Bonds more than 50 years old are admissible as ancient documents, where they are on their face free from suspicion as to their authenticity, come from the proper source, and are accompanied by some corroborating evidence. Smythe v. Inhabitants of New Providence Tp., Union County, N. J., C.C.A.N.J., 263 F. 481. Only the original copy of a deed, not the record copy, can be considered as an ancient document. Laclede Land & Improvement Co. v. Goodno, Mo. Sup., 181 S.W. 410, 413.

ANCIENTS. In English law, gentlemen of the inns of court and chancery.

In Gray's Inn the society consists of benchers, ancients, barristers, and students under the bar; and here the ancients are of the oldest barristers. In the Middle Temple, those who had passed their readings used to be termed "ancients." The Inns of Chancery consist of ancients and students or clerks; from the ancients a principal or treasurer is chosen yearly. Wharton.

The *Council of Ancients* was the upper Chamber of the French legislature under the constitution of 1795, consisting of 250, each required to be at least forty years old.

ANCIENTY. Eldership; seniority. Used in the statute of Ireland, 14 Hen. VIII. Cowell.

ANCILLA. Lat. A handmaid, an auxiliary, a subordinate. Manley v. Standard Oil Co. of Tex., D.C.Tex., 8 F.R.D. 354, 356.

ANCILLARY. Aiding; attendant upon; describing a proceeding attendant upon or which aids another proceeding considered as principal. In re Stoddard, 238 N.Y. 147, 144 N.E. 484, 486. Auxiliary or subordinate. Johnson v. Thomas, D.C. Tex., 16 F.Supp. 1019.

ANCILLARY ADMINISTRATION. Administration in state where decedent has property and which is other than where decedent was domiciled. First Nat. Bank v. Blessing, 231 Mo.App. 288, 98 S.W.2d 149, 151.

ANCILLARY ATTACHMENT. One sued out in aid of an action already brought, its only office

being to hold the property attached under it for the satisfaction of the plaintiff's demand. Templeton v. Mason, 107 Tenn. 625, 65 S.W. 25.

ANCILLARY BILL OR SUIT. One growing out of and auxiliary to another action or suit, either at law or in equity, such as a bill for disco$ery, or a proceeding for the enforcement of a judgment, or to set aside fraudulent transfers of property. Coltrane v. Templeton, Va., 45 C.C.A. 328, 106 F. 370. One growing out of a prior suit in the same court, dependent upon and instituted for the purpose either of impeaching or enforcing the judgment or decree in a prior suit. Hume v. New York, C.C.A.N.Y., 255 F. 488, 491; Caspers v. Watson, C.C.A.I11., 132 F.2d 614, 615.

ANCILLARY JURISDICTION. "Ancillary jurisdiction" of federal court generally involves either proceedings which are concerned with pleadings, processes, records or judgments of court in principal case or proceedings which affect property already in court's custody. Cooperative Transit Co. v. West Penn Electric Co., C.C.A.W.Va., 132 F.2d 720, 723. The ancillary process must be to aid, enjoin, or regulate original suit and prevent relitigation in other courts of issues heard and adjudged in such suit. O'Brien v. Richtarsic, D.C. N.Y., 2 F.R.D. 42, 44.

ANCILLARY PROCEEDING. One subordinate to or in aid of another primary action. Schram v. Roney, D.C.Mich., 30 F.Supp. 458, 46L

ANCILLARY RECEIVER. One appointed in aid of, and in subordination to, a foreign receiver for purpose of collecting and taking charge of assets, as of insolvent corporation, in the jurisdiction where he is appointed. In re Stoddard, 242 N.Y. 148, 151 N.E. 159, 164, 45 A.L.R. 622.

ANCIPITIS USUS. Lat. In international law, of doubtful use; the use of which is doubtful; that may be used for a civil or peaceful, as well as military or warlike, purpose. Gro. de Jure B. lib. 3, c. 1, § 5, subd. 3; 1 Kent, Comm. 140.

AND. A conjunction connecting words or phrases expressing the idea that the latter is to be added to or taken along with the first. Grand Trunk Western Ry. Co. v. Thrift Co., 68 Ind.App. 198, 116 N.E. 756, 759. Added to, together with, joined with, Business Men's Building & Loan Ass'n v. Tumulty, 13 N.J.Misc. 638, 180 A. 772. As well as. Porter v. Moores, 4 Heisk., Tenn., 16. Including. Finch v. Hunter, 148 Ark. 482, 230 S. W. 553, 554. "And also," Carter v. Keesling, 130 Va. 655, 108 S.E. 708, 713. Sometimes construed as "or." Land & Lake Ass'n v. Conklin, 182 App. Div. 546, 170 N.Y.S. 427, 428.

It expresses a general relation or connection, a participation or accompaniment in sequence, having no inherent meaning standing alone but deriving force from what comes before and after. In its conjunctive sense the word is used to conjoin words, clauses, or sentences, expressing the relation of addition or connection, and signifying that something is to follow in addition to that which proceeds and its use implies that the connected elements must be grammatically co-ordinate, as where the elements preceding and succeeding the use of the words refer to the same subject matter. While it is said that there Is no exact synonym of the word in English, it has been defined to mean "along with", "also", "and also", "as well as", "besides", "together with". Oliver v. Oliver, 286 Ky. 6, 149 S.W.2d 540, 542.

When expression "and/or" is used, that word may be taken as will best effect the purpose of the parties as gathered from the contract taken as a whole, or, in other words, as will best accord with the equity of the situation. Bobrow v. U. S. Casualty Co., 231 App.Div. 91, 246 N.Y.S. 363, 367.

The symbol "&c" indicates things of like character, with the things enumerated just before it. Fleck v. Harmstad, 304 Pa. 302, 155 A. 875, 878, 77 A.L.R. 874. It has been recognized as "sanctioned by age and good use." Brown v. State, 16 Tex.App. 245. And was constantly used by Lord Coke without a suggestion from any quarter that it is not English; Berry v. Osborn, 28 N.H. 279.

ANDROCHIA. In old English law, a dairy-woman. Fleta, lib. 2, c. 87.

ANDROGYNUS. A hermaphrodite.

ANDROLEPSY. The taking by one nation of the citizens or subjects of another, in order to compel the latter to do justice to the former. Wolffius, § 1164; Moll. de Jure Mar. 26.

ANDROMANIA. Nymphomania. 44 C.J.S. Insane Persons § 2, p. 19.

ANDROPHONOMANIA. Homicidal insanity.

ANECIUS. L. Lat. Spelled also *cesnecius, enitius, ceneas, eneyus,* Fr. *aisne.* The eldest-born; the first-born; senior, as contrasted with the *puis-nó* (younger). Spelman.

ANEURISM, or ANEURYSM. A sac formed by the dilatation of the weakened walls of an artery, usually resulting in a soft pulsating tumor. 3 Words and Phrases, Perm. Ed.

ANEW. To try a case or issue "anew" or "de novo" implies that the case or issue has been heard before. Gaiser v. Steele, 25 Idaho, 412, 137 P. 889, 890.

ANGARIA. A term used in the Roman law to denote a forced or compulsory service exacted by the government for public purposes; as a forced rendition of labor or goods for the public service; in particular, the right of a public officer to require the service of vehicles or ships. See Dig. 50, 4, 18, 4.

In *feudal law,* any troublesome or vexatious personal service paid by the tenant or villein to his lord. Spelman.

In *maritime law,* a forced service *(onus)* imposed on a vessel for public purposes; an impressment of a vessel. Locc. de Jure Mar. lib. 1, c. 5, §§ 1-6. See Angary, Right Of.

ANGARY, RIGHT OF. In international law, formerly the right ( *jus angarice)* claimed by a belligerent to seize merchant vessels in the harbors of the belligerent and to compel them, on payment of freight, to transport troops and supplies to a designated port. 2 Opp. 446.

At the present day, the right of a belligerent to appropriate, either for use, or for destruction in

case of necessity, neutral property temporarily located in his own territory or in that of the other belligerent. The property may be of any description whatever, provided the appropriation of it be for military or naval purposes.

ANGEL. An ancient English coin, of the value of ten shillings sterling. Jacob.

ANGER. A strong passion of the mind excited by real or supposed injuries; not synonymous with "heat of passion," "malice," or "rage or resentment," because these are all terms of wider import and may include anger as an element or as an incipient stage. Hoffman v. State, 97 Wis. 571, 73 N.W. 51.

ANGILD. In Saxon law, the single value of a man or other thing; a single weregild *(q. v.);* the compensation of a thing according to its single value or estimation. Spelman. The double gild or compensation was called *"twigild,"* the triple, *"trigild,"* etc. Id. See Angylde.

When a crime was committed, before the Conquest, the angild was the money compensation that the person who had been wronged was entitled to receive. Maitl. Domesday Book & Beyond 274.

ANGINA PECTORIS. Violent paroxysm of pain arising frequently from some disease of the coronary arteries, and is manifestation of disease rather than recognized disease in itself. Foster v. Borough of State College, 124 Pa.Super. 492, 189 A. 786, 789.

ANGLESCHERIA. In old English law, Englishery; the fact of being an Englishman.

ANGLIZE JURA IN OMNI CASU LIBERTATIS DANT FAVOREM. The laws of England in every case of liberty are favorable, (favor liberty in all cases.) Fortes. c. 42.

ANGLICE. In English, a term formerly used in pleading when a thing is described both in Latin and English, inserted immediately after the Latin and as an introduction of the English translation.

ANGLING. Derived from noun "angle," meaning a fishhook; tackle for catching fish, consisting of a line, hook, and bait, with or without a rod. Catching fish by rod, line and hook, or by line and hook. State v. Mears, 213 Ind. 257, 12 N.E.2d 343, 344.

ANGLO—INDIAN. An Englishman domiciled in the Indian territory of the British crown.

ANGORA GOAT. A more or less degenerate goat, known as the "Cape Angora," produced by breeding the original Angora with the Cape Colony goat, whose hair is shown to be dealt in, used, and known as mohair, is an "Angora goat" within the meaning of that expression in Schedule K, par. 305, Tariff Act of 1913. U. S. v. Beadenkopf Co., 8 Ct.Cust.App. 283, 284.

ANGUISH. Extreme pain of body or mind; excruciating distress. Carson v. Thompson, Mo. App., 161 S.W.2d 995, 1000. Agony, but, as used in law, particularly mental suffering or distress of great intensity. Cook v. Railway Co., 19 Mo.App. 334. It is not synonymous with inconvenience, annoyance, or harassment. Western Union Telegraph Co. v. Stewart, Ala.App. 502, 79 So. 200, 201.

ANGYLDE. In Saxon law, the rate fixed by law at which certain injuries to person or property were to be paid for; in injuries to the person, it seems to be equivalent to the "were," *i. e.,* the price at which every man was valued. It seems also to have been the fixed price at which cattle and other goods were received as currency, and to have been much higher than the market price, or *ceapgild.* Wharton. See Angild.

AN'HLOTE. In old English law, a single tribute or tax, paid according to the custom of the country as scot and lot.

ANIENS, or ANIENT. Null, void, of no force or effect. Fitzh.Nat.Brev. 214. See Anniented.

ANIMAL. Any animate being which is endowed with the power of voluntary motion. An animate being, not human. Bernardine v. City of New York, 182 Misc. 609, 44 N.Y.S.2d 881, 883.

*Domestic animals* are tame as distinguished from wild; living in or near the habitations of man or by habit or special training in association with man. Thurston v. Carter, 112 Me. 361, 92 A. 295, L.R.A.1915C, 359.

*Domitce* are those which have been tamed by man; domestic.

*Fera3 naturce* are those which still retain their wild nature.

*Mansuetce naturce* are those gentle or tame by nature, such as sheep and cows.

ANIMALS OF A BASE NATURE. Animals in which a right of property may be acquired by reclaiming them from wildness, but which, at common law, by reason of their base nature, are not regarded as possible subjects of a larceny. 3 Inst. 109; 1 Hale, P.C. 511, 512.

Some animals which are now usually tamed come within this class, as dogs and cats; and others which, though wild by nature and often reclaimed by art and industry, clearly fall within the same rule, as bears, foxes, apes, monkeys, ferrets, and the like; 1 Hawk.Pl.Cr. 33, § 36; 4 Bla.Com. 236; 2 East, Pl.Cr. 614. See 1 Wms.Saund. 84, note 2.

ANIMALIA FERA, SI FACTA SINT MANSUETA ET EX CONSUETUDINE EUNT ET REDEUNT, VOLANT ET REVOLANT, UT CERVI, CYGNI, ETC., EO USQUE NOSTRA SUNT, ET ITA INTELLIGUNTUR QUAMDIU HABUERUNT ANIMUM REVERTENDI. Wild animals, if they be made tame, and are accustomed to go out and return, fly away and fly back, as stags, swans, etc., are considered to belong to us so long as they have the intention of returning to us. 7 Coke, 16.

ANIMO. Lat. With intention, disposition, design, will. *Quo animo,* with what intention. *Animo cancellandi,* with intention to cancel. 1 Pow.Dev. 603. *Furandi,* with intention to steal. 4 Bl.Comm. 230; 1 Kent, Comm. 183. *Lucrandi,* with intention to gain or profit. 3 Kent, Comm. 357. Manendi,

with intention to remain. 1 Kent, Comm. 76. *Morandi,* with intention to stay, or delay. *Republicandi,* with intention to republish. 1 Pow.Dev. 609. *Revertendi,* with intention to return. 2 Bl. Comm. 392. *Revocandi,* with intention to revoke. 1 Pow.Dev. 595. *Testandi,* with intention to make a will. See Animus and the titles which follow it.

ANIMO ET CORPORE. By the mind, and by the body; by the intention and by the physical act. Dig. 50, 17, 153; Id. 41, 2, 3, 1; Fleta, lib. 5, c. 5, §§ 9, 10

ANIMO FELONICO. With felonious intent. Hob. 134.

ANIMUS. Lat. Mind; intention; disposition; design; will. *Animo (q. v.),* with the intention or design. These terms are derived from the civil law.

ANIMUS AD SE OMNE JUS DUCIT. It is to the intention that all law applies. Law always re-. gards the intention.

ANIMUS CANCELLANDI. The intention of destroying or canceling, (applied to wills).

ANIMUS CAPIENDI. The intention to take or capture. 4 C.Rob.Adm. 126, 155.

ANIMUS DEDICANDI. The intention of donating or dedicating.

ANIMUS DEFAMANDI. The intention of defaming. The phrase expresses the malicious intent which is essential in every case of verbal injury to render it the subject of an action for libel or slander.

ANIMUS DERELINQUENDI. The intention of abandoning. 4 C.Rob.Adm. 216. Rhodes v. Whitehead, 27 Tex. 304, 84 Am.Dec. 631.

ANIMUS DIFFERENDI. The intention of obtaining delay.

ANIMUS DONANDI. The intention of giving. Expressive of the intent to give which is necessary to constitute a gift.

ANIMUS ET FACTUM. To constitute a change of domicile, there must be an "animus et factum"; the "factum" being a transfer of the bodily presence, and the "animus" the intention of residing permanently or for indefinite period. Hayward v. Hayward, 65 Ind.App. 440, 115 N.E. 966, 970. See Animus Manendi.

ANIMUS ET FACTUS. Intention and act; will and deed. Used to denote those acts which become effective only when accompanied by a particular intention.

ANIMUS FURANDI. Intent to steal, or to feloniously deprive the owner permanently of his property. Jones v. Commonwealth, 172 Va. 615, 1 S.E. 2d 300, 301.

ANIMUS HOMINIS EST ANIMA SCRIPT!. The intention of the party is the soul of the instrument. 9 Bulst. 67; Pitm. Prin. & Sur. 26. In order to give life or effect to an instrument, it is essential to look to the intention of the individual who executed it.

ANIMUS LUCRANIiI. The intention to make a gain or profit.

ANIMUS MANENDI. The intention of remaining; intention to establish a permanent residence. 1 Kent, Comm. 76. This is the point to be settled in determining the domicile or residence of a party. Id. 77. See Animus et Factum.

ANIMUS MORANDI. The intention to remain, or to delay.

ANIMUS POSSIDENDI. The intention of possessing.

ANIMUS QUO. The intent with which.

ANIMUS RECIPIENDI. The intention of receiving.

ANIMUS RECUPERANDI. The intention of recovering. Locc. de Jure Mar. lib. 2, c. 4, § 10.

ANIMUS REPUBLICANDI. The intention to republish.

ANIMUS RESTITUENDI. The intention of restoring. Fleta, lib. 3, c. 2, § 3.

ANIMUS REVERTENDI. The intention of returning.

A man retains his domicile if he leaves it animo *revertendi.* In re Miller's Estate, 3 Rawle (Pa.) 312. 24 Am.Dec. 345; 4 B1. Comm. 225; 2 Russ. Crimes, 18; Poph. 42, 52; 4 Coke, 40. Also, a term employed in the civil law, in expressing the rule of ownership in tamed animals.

ANIMUS REVOCANDI. The intention to revoke.

ANIMUS SIGNANDI. Intention to sign instrument as and for a will. Hamlet v. Hamlet, 183 Va. 453, 32 S.E.2d 729, 732.

ANIMUS TESTANDI. Intention or serious purpose to make will. In re Kemp's Will, Del., 7 W. W.Harr. 514, 186 A. 890, 894.

ANKER. A measure containing ten gallons.

ANN. In Scotch law, half a year's stipend, over and above what is owing for the incumbency, due to a minister's relict, or child, or next of kin, after his decease. Whishaw.

ANNA. In East Indian coinage, a piece of money, the sixteenth part of a rupee.

ANNALES. Lat. Annuals; a title formerly given to the Year Books.

In old records. Yearlings; cattle of the first year. Cowell.

ANNALS. Masses said in the Romish church for the space of a year or for any other time, either for the soul of a person deceased, or for the benefit of a person living, or for both. Aylif. Parerg.

ANNALY. In Scotch law, to alienate; to convey.

ANNATES. In ecclesiastical law, first-fruits paid out of spiritual benefices to the Pope, so called because the value of one year's profit was taken as their rate.

ANNEX. Derived from the Latin "annectere," meaning to tie or bind to. To attach, and often, specifically, to subjoin. In re Annexation to City of Easton of Tract of Land in Williams Tp., Northampton County, 139 Pa.Super. 146, 11 A.2d 662, 664. To add to; to unite. The word expresses the idea of joining a smaller or subordinate thing with another, larger, or of higher importance. Waterbury Lumber & Coal Co. v. Asterchinsky, 87 Conn. 316, 87 A. 739, 740, Ann.Cas. 1916B, 613. To consolidate, as school districts. Evans v. Hurlburt, 117 Or. 274, 243 P. 553, 554. To make an integral part of something larger.

It implies physical connection or physically joined to, yet physical connection may be dispensed with, and things may be annexed without being in actual contact, when reasonably practicable. Elliott Common School Dist. No. 48 v. County Board of School Trustees, Tex.Civ.App., 76 S.W.2d 786, 789.

In the law relating to *fixtures,* the expression "annexed to the freehold" means fastened to or connected with it; mere juxtaposition, or the laying of an object, however heavy, on the freehold, does not amount to annexation. Merritt v. Judd, 14 Cal. 64.

ANNEXATION. The act of attaching, adding, joining, or uniting one thing to another; generally spoken of the connection of a smaller or subordinate thing with a larger or principal thing.

The attaching an illustrative or auxiliary document to a deposition, pleading, deed, etc., is called "annexing" it. So the incorporation of newly-acquired territory into the national domain, as an integral part thereof, is called "annexation," as in the case of the addition of Texas to the United States.

In the law relating to *fixtures: Actual annexation* includes every movement by which a chattel can be joined or united to the freehold. *Constructive annexation* is the union of such things as have been holden parcel of the realty, but which are not actually annexed, fixed, or fastened to the freehold. Shep.Touch. 469; Amos & F. Fixt. 2.

Scotch Law

The union of lands to the crown, and declaring them inalienable. Also the appropriation of the church-lands by the crown, and the union of lands lying at a distance from the parish church to which they belong, to the church of another parish to which they are contiguous.

ANNI ET TEMPORA. Lat. Years and terms. An old title of the Year Books.

ANNI NUBILES. A woman's marriageable years. The age at which a girl becomes by law fit for marriage; the age of twelve.

ANNICULUS. A child a year old. Calvinus, Lex.

ANNICULUS TRECENTESIMO SEXAGESIMO-QUINTO DIE DICITUR, INCIPIENTE PLANE NON EXACTO DIE, QUIA ANNUM CIVILITER NON AD MOMENTA TEMPORUM SED AD DIES NUMERAMUR. We call a child a year old on the three hundred and sixty-fifth day, when the day is fairly begun but not ended, because we calculate the civil year not by moments; but by days. Dig. 50, 16, 134; Id. 132; Calvin.

ANNIENTED. Made null, abrogated, frustrated, or brought to nothing. Litt. c. 3, § 74L Cf. Aniens.

ANNIVERSARY. An annual day, in old ecclesiastical law, set apart in memory of a deceased person. Also called "year day" or "mind day." Spelman.

As applied to an insurance policy, "anniversary" means yearly recurring date of the policy, Mid-Continent Life Ins. Co. v. Skye, 113 Okl. 184, 240 P. 630, 632, or perhaps the date of the delivery thereof, Jefferson Standard Life Ins. Co. v. Baker, Tex.Civ.App., 260 S.W. 223, 225.

ANNO DOMINI. In the year of the Lord. Commonly abbreviated A. D. The computation of time, according to the Christian era, dates from the birth of Christ.

ANNONA. Barley; corn; grain; food; a yearly contribution of food, of various kinds, for support.

*Annona porcum,* acorns; annona *frumentum hordeo admixtum,* corn and barley mixed; annona *panis,* bread without reference to the amount. Du Cange; Spelman, Gloss. ; Cowell.

The term is used in the old English law, and also in the civil law quite generally, to denote anything contributed by one person towards the support of another.

ANNONIE CIVILES. A species of yearly rents issuing out of certain lands, and payable to certain monasteries.

ANNOTATIO. In the civil law, the sign-manual of the emperor; a rescript of the emperor, signed with his own hand. It is distinguished both from a rescript and pragmatic sanction, in Cod. 4, 59, 1.

ANNOTATION. A remark, note, or commentary on some passage of a book, intended to illustrate its meaning. Webster.

In the *civil law,* an imperial rescript (see Rescript) signed by the emperor. The answers of the prince to questions put to him by private persons respecting some doubtful point of law. Also summoning an absentee. Dig. 1, 5. And the designation of a place of deportation. Dig. 32, 1, 3.

ANNOUNCED. A decision is "announced," preventing nonsuit, when court's conclusion on issue tried is made known from bench or by any publication, oral or written, even if judgment has not been rendered. Ex parte Alabama Marble Co., 216 Ala. 272, 113 So. 240, 242.

ANNOYANCE. Discomfort; vexation. Not synonymous with anguish, inconvenience, or harassment. Western Union Telegraph Co. v. Stewart, 16 Ala.App. 502, 79 So. 200, 201. "Annoyance and inconvenience" relate as much to physical as to mental conditions. Chicago, I. & L. Ry. Co. v. Ader, 184 Ind. 235, 110 N.E. 67, 69. It includes feeling of imposition and oppression Alabama Water Service Co. v. Wakefield, 231 Ala. 112, 163 So. 626.

ANNUA. NEC DEBITUM JUDEX NON SEPARAT IPSUM. A judge (or court) does not divide annuities nor debt. 8 Coke, 52; 1 Salk. 36, 65. Debt and annuity cannot be divided or apportioned by a court.

ANNUA PENSIONE. An ancient writ to provide the king's chaplain, if he had no preferment, with a pension. Reg.Orig. 165, 307.

ANNUAL. Of or pertaining to year; returning every year; coming or happening yearly. Payne v. Gypsy Oil Co., 129 Okl. 18, 263 P. 138, 140. Occurring or recurring once in each year; continuing for the period of a year; accruing within the space of a year; relating to or covering the events or affairs of a year. State v. McCullough, 3 Nev. 224. Once a year, without signifying what time in year. Rolerson v. Standard Life Ins. Co., Tex.Civ.App., 244 S.W. 845, 846.

ANNUAL AMOUNT. The annual amount of contribution at the rate at which deceased was contributing to support of partial dependents, at the time of his injury, regardless of whether that rate had existed for a year or more or for less than a year. Spreckles Sugar Co. v. Industrial Acc. Commission, 186 Cal. 256, 199 P. 8.

ANNUAL ASSAY. An annual trial of the gold and silver coins of the United States, to ascertain whether the standard fineness and weight of the coinage is maintained. See Rev.St.U.S. § 3547 (31 U.S.C.A. § 363).

ANNUAL AVERAGE EARNINGS. Include both the earnings from a seasonal occupation and also the actual earnings for the remainder of the year from whatever occupation they may have been received, provided the nonseasonal income is limited to employments of the same class and is measured by the wages of the injured employee, or those similarly employed, as the facts may require, whenever the feature of nonseasonal employment is involved Dicaro v. Fitzgibbon, 249 App.Div. 38, 291 N.Y.S, 764, 767.

ANNUAL DEPRECIATION. The annual loss, not restored by current maintenance, which is due to all the factors causing the ultimate retirement of *the* property. These factors embrace wear and tear, decay, inadequacy, and obsolescence. The annual loss in service value not restored by current maintenance and incurred in connection with the consumption or prospective retirement of property in the course of service from causes known to be in current operation, and whose effect can be forecast with a reasonable approach to accuracy. State v. Hampton Water Works Co., 91 N.H. 278, 18 A.2d 765, 770.

ANNUAL PENSION. In Scotch law, a yearly profit or rent.

ANNUAL RENT. In Scotch law, yearly interest on a loan of money.

ANNUAL SALARY. Does not refer to salary by calendar years, but by the years of incumbent's term, according to time of year when term commences, and salary must be calculated for year as a whole. State ex rel. Harvey v. Linville, 318 Mo. 698, 300 S.W. 1066, 1067.

ANNUAL VALUE. The net yearly income derivable from a given piece of property; its fair rental value for one year, deducting costs and expenses; the value of its use for a year.

ANNUALLY. In annual order or succession; yearly, every year, year by year. Upham v. Shattuck, 151 Kan. 966, 101 P.2d 901, 903. At end of each and every year during a period of time. Patterson v. McNeeley, 16 Ohio St. 348. Imposed once a year, computed by the year. People ex rel. Mutual Trust Co. v. Westchester County v. Miller, 177 N.Y. 51, 69 N.E. 124, 125.

ANNUITANT. The recipient of an annuity; one who is entitled to an annuity.

ANNUITIES OF TIENDS. In Scotch law, annuities of tithes; 10s. out of the boll of tiend wheat, 8s. out of the boll of beer, less out of the boll of rye, oats, and peas, allowed to the crown yearly of the tiends not paid to the bishops, or set apart for other pious uses.

ANNUITY. A yearly payment of money for life or years. State ex rel. Chamberlain v. Johnstone, 65 N.D. 727, 262 N.W. 193. Or in fee, and chargeable only on the person of the grantor. Co.Litt. 144b. A fixed sum, granted or bequeathed, payable periodically but not necessarily annually. Wilkin v. Board of Com'rs of Oklahoma County, 77 Okl. 88, 186 P. 474, 475; Fate v. Fate, 295 Ill. App. 271, 14 N.E.2d 890, 892. A legacy payable by installments. In re Beach's Estate, 203 N.Y.S. 492, 494, 122 Misc.Rep. 261. Also, the right to receive such periodical amount. Daniel v. Life Ins. Co. of Virginia, Tex.Civ.App., 102 S.W.2d 256, 259.

It is distinguished from an "income," in that the latter is interest or profits to be earned. Grand Rapids Trust Co. v. Herbst, 220 Mich. 321, 190 N.W. 250, 252. Too, it is chargeable on the person merely, and so far personalty; while a rent-charge is something reserved out of realty, or fixed as a burden upon an estate in land. 2 B1.Comm. 40; Rolle, Abr. 226; Horton v. Cook, 10 Watts (Pa.) 127, 36 Am. Dec. 151.

The contract of *annuity Is* that by which one party delivers to another a sum of money, and agrees not to reclaim it so long as the receiver pays the rent agreed upon. This annuity may be either perpetual or for life. See Succession of Vidalat, 155 La. 1005, 99 So. 801, 802.

The name of an action, now disused, (L. Lat. *breve de annuo redditu,)* which lay for the recovery of an annuity. Reg.Orig. 158b; Bract. fol. 203b; 1 Tidd, Pr. 3.

ANNUITY POLICY. An insurance policy providing for monthly payments to insured to begin at fixed date and continue through insured's life. Hamilton v. Penn Mut. Life Ins. Co., 196 Miss. 345, 17 So.2d 278, 280.

ANNUITY-TAX. An impost levied annually in Scotland for the maintenance of the ministers of religion.

ANNUL. To reduce to nothing; annihilate; obliterate; to make void or of no effect; to nullify; to abolish; to do away with. Ex parte Mitchell, 123 W.Va. 283, 14 S.E.2d 771, 774. To cancel; destroy; abrogate. To annul a judgment or judicial proceeding is to deprive it of all force and operation, either ab initio or prospectively as to future transactions. In re Morrow's Estate, 204 Pa. 484, 54 A. 342.

It is not a technical word and there is nothing which prevents the idea from being expressed in equivalent words; Woodson v. Skinner, 22 Mo. 24.

ANNULMENT. Act of annulling; act of making void retrospectively as well as prospectively. Deihl v. Jones, 170 Tenn. 217, 94 S.W.2d 47, 48.

Action for divorce is distinguished from one for annulment, in that "divorce action" is predicated on valid marriage and decree terminates relationship from date thereof, while "annulment" destroys existence of void or voidable marriage and everything appertaining thereto from the beginning. Wigder v. Wigder, 14 N.J.Misc. 880, 188 A. 235, 236.

ANNULUS. Lat. In old English law, a ring; the ring of a door. *Per haspam vel annulum hostii exterioris;* by the hasp or ring of the outer door. Fleta, lib. 3, c. 15, § 5.

ANNULUS ET BACULUS. (Lat. ring and staff.) The investiture of a bishop was *per annulum et baculum,* by the prince's delivering to the prelate a ring and pastoral staff, or crozier. 1 Bl.Comm. 378; Spelman.

ANNUM, DIEM, ET VASTUM. See Year, Day, and Waste.

ANNUS. Lat. In civil and old English law, a year; the period of three hundred and sixty-five days. Dig. 40, 7, 4, 5; Calvin.; Bract. fol. 359b.

ANNUS DELIBERANDI. In Scotch law, a year of deliberating; a year to deliberate. The year allowed by law to the heir to deliberate whether he will enter and represent his ancestor. It commences on the death of the ancestor, unless in the case of a posthumous heir, when the year runs from his birth. Bell.

ANNUS, DIES, ET VASTUM. In old English law, year, day, and waste. See Year, Day, and Waste.

ANNUS EST MORA MOTUS QUO SUUM PLANETA PERVOLVAT CIRCULUM. A year is the duration of the motion by which a planet revolves through its orbit. Dig. 40, 7, 4, 5; Calvin.; Bract. 359b.

ANNUS ET DIES. A year and a day.

ANNUS INCEPTUS PRO COMPLETO HABETUR. A year begun is held as completed. Tray. Lat.Max. 45.

ANNUS LUCTUS. The year of mourning. It was a rule among the Romans, and also the Danes and Saxons, that widows should not marry *infra annum luctfis,* (within the year of mourning.) Cod. 5, 9, 2; 1 Bl.Comm. 457,

ANNUS UTILIS. A year made up of available or serviceable days. Brissonius; Calvin. In the plural, anni *utiles* signifies the years during which a right can be exercised or a prescription grow. In prescription, the period of incapacity of a minor, etc., was not counted; it was no part of the anni *utiles.*

ANNUUS REDITUS. A yearly rent; annuity. 2 Bl.Comm. 41; Reg.Orig. 158b.

ANOMALOUS. Deviating from common rule; irregular; exceptional; abnormal. Palmer v. Palmer, Woolf & Gray, 183 La. 458, 164 So. 245, 247. Unusual; not conforming to rule, method, or type.

ANOMALOUS INDORSER. A stranger to a.note, who indorses it after its execution and delivery but before maturity, and before it has been indorsed by the payee. Buck v. Hutchins, 45 Minn. 270, 47 N.W. 808.

ANOMALOUS PLEA. One which is partly affirmative and partly negative. Baldwin v. Elizabeth, 42 N.J.Eq. 11, 6 A. 275; Potts v. Potts, N.J.Ch., 42 A. 1055.

ANON., AN., A. Abbreviations for anonymous.

ANONYMOUS. Nameless; wanting a name or names. A publication, withholding the name of the author, is said to be anonymous. An anonymous letter is one that has no name signed. Belk v. State, 102 Tex.Cr.R. 561, 278 S.W. 842.

Cases are sometimes reported anonymously, i. *e.,* without giving the names of the parties. Abbreviated to *"Anon."*

An anonymous society in the Mexican code is one which has no firm name and is designated by the particular designation of the object of the undertaking.

ANOTHER. Additional. Harelson v. South San Joaquin Irr. Dist., 20 Cal.App. 324, 128 P. 1010, 1011. Distinct or different. Hammell v. State, 198 Ind. 45, 152 N.E. 161, 163; Ex parte Lyman, D.C.Wash., 202 F. 303, 304.

ANOTHER ACTION PENDING. See Auter Action Pendant.

ANOYSANCE. Annoyance; nuisance. Cowell; Kelham.

ANSEL, ANSUL, or AUNCEL. In old English law, an ancient mode of weighing by hanging scales or hooks at either end of a beam or staff, which, being lifted with one's finger or hand by the middle, showed the equality or difference between the weight at one end and the thing weighed at the other. Termes de la Ley, 66.

ANSWER. As a verb, the word denotes an assumption of liability, as to "answer" for the debt or default of another.

Pleading

Strictly speaking, it is a pleading by which defendant in suit at law endeavors to resist the plaintiff's demand by an allegation of facts, either denying allegations of plaintiff's complaint or

confessing them and alleging new matter in avoidance, which defendant alleges should prevent recovery on facts alleged by plaintiff. In re Herle's Will, 173 Misc. 879, 19 N.Y.S.2d 263, 265.

In chancery pleading, the term denotes a defense in writing, made by a defendant to the allegations contained in a bill or information filed by the plaintiff against him.

In pleading, under the Codes of Civil Procedure, the answer is the formal written statement made by a defendant setting forth the grounds of his defense; corresponding to what, in actions under the common-law practice is called the "plea." But as used in a statute providing that defendant must appear and answer the petition, "answer" refers to any sort of pleading filed by defendant. State ex rel. Oliver Hast Auction Co. v. Grimm, 197 Mo.App. 566, 196 S.W. 1019, 1021. Cross-complaint. Celina Mut. Casualty Co. v. Baldridge, 213 Ind. 193, 12 N.E.2d 258, 260. Counterclaim. Long v. Mutual Trust Life Ins. Co., 191 Minn. 163, 253 N.W. 762. Motion to quash service of summons. Phillips v. Manufacturers Trust Co., C.C. A.Idaho, 101 F.2d 723, 727. Objections by contestants to petition for probate of will. In re Swim's Will, 258 N.Y.S. 458, 144 Misc. 206. Objections to executor's final report. Meier v. Union Trust Co. of Indianapolis, 93 Ind.App. 457, 176 N. E. 42, 51. Demurrer. Evans v. Superior Court in and for Los Angeles County, 14 Cal.App.2d 743, 59 P.2d 159, 160, contra. Mariner v. Milisich, 45 Nev. 193, 200 P. 478.

In Massachusetts, the term denotes the statement of the matter intended to be relied upon by the defendant in avoidance of the plaintiff's action, taking the place of special pleas in bar, and the general issue, except in real and mixed actions. Pub.St.Mass.1882, p. 1287.

In matrimonial suits in the (English) probate, divorce, and admiralty division, an answer is the pleading by which the respondent puts forward his defense to the petition. Browne, Div. 223.

Under the old admiralty practice in England, the defendant's first pleading was called his "answer." Williams & B. Adm. Jur. 246.

*Frivolous answer.* See Sham Answer, *infra.*

An *irrelevant answer* is one that has no substantial relation to the controversy;—distinguishable from a sham answer. Rosatti v. Common School Dist. No. 96 of Cass County, 53 N.D. 268, 205 N.W. 678, 679.

A sham *answer* is one sufficient on its face but so clearly false that it presents no real issue to be tried. Bank of Richards, Mo., v. Sheasgreen, 153 Minn. 363, 190 N.W. 484. One good in form, but false in fact and not pleaded in good faith. Burkhalter *v.* Townsend, 139 S.C. 324, 138 S.E. 34, 36. A frivolous answer, on the other hand, is one which on its face sets up no defense, although it may be true in fact.

A *voluntary answer,* in chancery, was an answer put in by a defendant, when plaintiff had filed no interrogatories which required to be answered. Hunt, Eq.

Practice

A reply to interrogatories; an affidavit in answer to interrogatories. The declaration of a fact by a witness after a question has been put, asking for it.

ANTAPOCHA. In the Roman law, a transcript or counterpart of the instrument called *"apocha" (q. v.),* signed by the debtor and delivered to the creditor. Calvin.

ANTE. Lat. Before. Usually employed in old pleadings as expressive of time, as *prce* (before) was of place, and *coram* (before) of person. Townsh.Pl. 22.

Occurring in a report or a text-book, it is used to refer the reader to a previous part of the book.

ANTE EXHIBITIONEM BILIJE. Before the exhibition of the bill. Before suit begun.

ANTE-FACT1UM, or ANTE-GESTUM. Done before. A Roman law term for a previous act, or thing done before.

ANTE JURAMENTUM. See Antejuramentum.

ANTE LITEM MOTAM. At time when declarant had no motive to distort truth, In re Hayden's Estate, 176 Misc. 1078, 29 N.Y.S.2d 852, 856. Before suit brought, before controversy instituted. Also, before the controversy arose. Corbett v. Hawes, 187 N.C. 653, 122 S.E. 478, 479.

ANTE MORTEM INTEREST. Interests existing only prior to, and not after, transferor's death. Cairins v. Martin, 130 N.J.Eq. 313, 22 A.2d 415, 419.

ANTE NATUS. Born before. A person born before another person or before a particular event.

The term is particularly applied to one born In a country before a revolution, change of government or dynasty, cr other political event, such that the question of his rights, *status,* or allegiance will depend upon the date of his birth with reference to such event. In England, the term Con,-monly denotes one born before the act of un [1]on with Scotland; in America, one born before the declaration of independence. Its opposite is *post natus,* one born after the event.

ANTEA. Lat. Formerly; heretofore.

ANTECEDENT. Prior in point of time. Turner v. State, 84 Tex.Cr.R. 267, 206 S.W. 689.

ANTECEDENT CREDITORS. Those whose debts are created before the debtor makes a transfer not lodged for record. Stone v. Keith, 218 Ky. 11, 290 S.W. 1042, 1043.

ANTECESSOR. An ancestor *(q. v.).*

ANTEDATE. To affix an earlier date; to date an instrument as of a time before the time it was written.

ANTEJURAMENTUM. In Saxon law, a preliminary or preparatory oath (called also "prcejura-*mentum,"* and *"juramentum calumnice," (q. v.),* which both the accuser and accused were required to make before any trial or purgation; the accuser swearing that he would prosecute the criminal, and the accused making oath on the very day that he was to undergo the ordeal that he was innocent of the crime with which he was charged. Whishaw.

ANTENATI. See Ante Natus.

ANTENNA. In wireless telegraphy, the wire in the air on the tall mast is called the "antenna." National Electric Signaling Co. v. Telefunken Wireless Telegraph Co. of United States, C.C.A. N.Y., 221. F. 629, 631. A wire, or a combination of wires, supported in the air for directly transmitting electric waves into space, or receiving them therefrom. Webster, Diet.

ANTENUPTIAL. Made or done before a marriage.

ANTENUPTIAL CONTRACT. A contract made before marriage. Agreement in contemplation of marriage, Hewett v. Gott, 294 P. 897, 901, 132 Kan. 168, called a marriage contract.

ANTENUPTIAL SETTLEMENTS. Contracts or agreements between a man and woman before marriage, but in contemplation and generally in consideration of marriage, whereby the property rights and interests of either the prospective husband or wife, or both of them, are determined, or where property is secured to either or both of them, or to their children. In re Carnevale's Will, 248 App.Div. 62, 289 N.Y.S. 185, 188.

ANTHRACITE COAL. "Anthracite coal" differs from bituminous coal in the amount of fixed carbon, the amount of volatile matter, color, luster, and structural character. The percentage of fixed carbon in anthracite coal is much higher and the percentage of volatile matter is much lower than in bituminous coal. Anthracite coal is hard, compact and is comparatively clean and free from dust and is commonly termed "hard coal," and burns with practically no smoke. Commonwealth v. Hudson Coal Co., 287 Pa. 64, 134 A. 413, 414.

ANTHRACNOSE. A disease of watermelons caused by parasitic fungus capable of puncturing and invading tissues of rind and sometimes of pulp within fruit. S. L. Shepard & Co. v. Agwilines, Inc., C.C.A.S.C., 130 F.2d 67, 69.

ANTHRACOSIS. A type of pneumoconiosis due to inhalation of coal dust. Allen v. Shell Petroleum Corporation, 146 Kan. 67, 68 P.2d 651, 657.

ANTHRAX. Also called splenic fever, carbuncular fever, malignant pustule, charbon, and woolsorters' disease. An acute, infectious disease of animals, especially cattle, swine, and sheep, and transmissible to human beings. Century Dict.; Bacon v. United States Mut. Acc. Ass'n, 123 N.Y. 304, 25 N.E. 399, 400, 9 L.R.A. 617.

ANTHROPOMETRY. In criminal law and medical jurisprudence. The measurement of the human body; a system of measuring the dimensions of the human body, both absolutely and in their proportion to each other, the facial, cranial, and other angles, the shape and size of the skull, etc., for purposes of comparison with corresponding measurements of other individuals, and serving for the identification of the subject in cases of doubtful or disputed identity. It was largely adopted after its introduction in France in 1883, but fell into disfavor as being costly and as liable to error. It has given place to the "finger print" system devised by Francis Galton. See Bertillon System.

ANTI MANIFESTO. A term used in international law to denote a proclamation or manifesto published by one of two belligerent powers, alleging reasons why the war is defensive on its part.

ANTI-TRUST ACTS. Federal and state statutes to protect trade and commerce from unlawful restraints and monopolies. U. S. v. Knight Co., 15 S.Ct. 249, 156 U.S. 1, 39 L.Ed. 325; U. S. v. New York Great Atlantic & Pacific Tea Co., C.C.A.Tex., 137 F.2d 459. See, also, Restraint of Trade.

Clayton Act. Oct. 15, 1914 as amended, 15 U.S.C.A. §§ 12-27, 44 ; 18 U. S. C. A. § 412 ; 28 U. S. C. A. §§ 381-383, 386-390 ; 29 U.S.C.A. § 52.

Sherman Anti-Trust Act, July 2, 1890, as amended, 15 U. S.C.A. §§ 1-7, 15 note.

ANTICHRESIS. In the civil law. A species of mortgage, or pledge of immovables. An agreement by which the debtor gives to the creditor the income from the property which he has pledged, in lieu of the interest on his debt. Guyot, Repert; Marquise De Portes v. Hurlbut. 44 N.J.Eq. 517, 14 A. 891. It is analogous to the Welsh mortgage of the common law. In the French law, if the income was more than the interest, the debtor was entitled to demand an account of the income, and might claim any excess.

A debtor may give as security for his debt any immovable which belongs to him, the creditor having the right to enjoy the use of it on account of the interest due, or of the capital if there is no interest due; this is called "antichresis." Civ. Code Mex. art. 1927.

By the law of Louisiana, there are two kinds of pledges,—the pawn and the antichresis. A pawn relates to movables, and the antichresis to immovables. The antichresis must be reduced to writing; and the creditor thereby acquires the right to the fruits, etc., of the immovables, deducting yearly their proceeds from the interest, in the first place, and afterwards from the principal of his debt. He is bound to pay taxes on the property, and keep it in repair, unless the contrary is agreed. The creditor does not become the proprietor of the property by failure to pay at the agreed time, and any clause to that effect is void. He can only sue the debtor, and obtain sentence for sale of the property. The possession of the property is, however, by the contract, transferred to the creditor. La.Civil Code, Arts. 3176-3181; Livingston v. Story, 11 Pet. 351, 9 L.Ed. 746.

The "antichresis" is an antiquated contract, and has been resorted to in Louisiana in but a few instances. Harang v. Ragan, 134 La. 201, 63 So. 875, 877. Essential element of contract, Conklin v. Caffall, 179 So. 434, 437, 438, 439, 189 La. 301.

ANTICIPATION. Act of doing or taking a thing before its proper time, Wilmington Trust Co. v. Wilmington Trust Co., 25 Del.Ch. 193, 15 A.2d 665, 668, 669. To do, take up, or deal with, before another; to preclude or prevent by prior action; to be before in doing, State ex rel. Todd v. Thomas, 127 Neb. 891, 257 N.W. 265, 96 A.L.R. 1470.

In conveyancing, the act of assigning, charging, or otherwise dealing with income before it becomes due.

In patent law, a person is said to have been anticipated when he patents a contrivance already known within the limits of the country granting the patent. Topliff v. Topliff, 12 S.Ct. 825, 145 U. S. 156, 36 L.Ed. 658.

An unsuccessful attempt to achieve a particular purpose is not "anticipation". Swan Carburetor Co. v. Nash Motors Co., D.C.Md., 25 F.Supp. 24, 34. The test being whether patentee has added anything of value to the sum of human knowledge, whether he has made the world's work easier, cheaper, and safer, so that return to prior art would be a retrogression. Butler v. Burch Plow Co., C.C.A.Cal., 23 F.2d 15, 24. But invention is not "anticipated" by accidental, incidental or unintentional use of some of its features, unless the benefits or ensuing results from such use are appreciated or recognized. Balaban v. Polyfoto Corporation, D.C.Del., 47 F.Supp. 472, 477, 478.

In law of negligence, "anticipation" is not confined to expectation. Kenney v. Wong Len, 81 N.H. 427, 128 A. 343, 344. But compare Hardy v. Missouri Pac. R. Co., C.C.A.Ark., 266 F. 860, 863, 36 A.L.R. 1. It means probability not possibility as applied to duty to anticipate consequences of conduct attacked as negligent. Empire Dist. Electrict Co. v. Harris, C.C.A.Mo., 82 F.2d 48, 52.

ANTICIPATORY BREACH OF CONTRACT. See Breach of Contract.

ANTIGRAPHUS. In Roman law. An officer whose duty it was to take care of tax money. A comptroller.

ANTIGRAPHY. A copy or counterpart of a deed.

ANTINOMIA. In Roman law. A real or apparent contradiction or inconsistency in the laws. Merl. Rêpert. Conflicting laws or provisions of law; inconsistent or conflicting decisions or cases.

ANTINOMY. A term used in logic and law to denote a real or apparent inconsistency or conflict between two authorities or propositions; same as *antinomia (q. v.).*

ANTIQUA CUSTUMA. In English law. Ancient custom. An export duty on wool, woelfells, and leather, imposed during the reign of Edw. I. It was so called by way of distinction from an increased duty on the same articles, payable by foreign merchants, which was imposed at a later period of the same reign and was called *"custuma* nova." 1 Bl.Comm. 314.

ANTIQUA STATUTA. Also called *"Vetera Statuta."* English statutes from the time of Richard I. to Edward III. 1 Reeve, Eng.Law, 227. See Nova Statuta.

ANTIQUARE. In Roman law. To restore a former law or practice; to reject or vote against a *new* law; to prefer the old law. Those who voted against a proposed law wrote on their ballots the letter "A," the initial of *antiquo,* I am for the old law. Calvin.

ANTIQUUM DOMINICUM. In old English law. Ancient demesne.

ANTITHETARIUS. In old English law. A man who endeavors to discharge himself of the crime of which he is accused, by retorting the charge on the accuser. He differs from an approver in this: that the latter does not charge the accuser, but others. Jacob.

ANTRUSTIO. In early feudal law. A confidential vassal. A term applied to the followers or dependents of the ancient German chiefs, and of the kings and counts of the Franks. Burrill.

ANUELS LIVRES. L. Fr. The Year Books. Kelham.

ANY. Some; one out of many; an indefinite number. State v. Pierson, 204 Iowa 837, 216 N. W. 43, 44. One indiscriminately of whatever kind or quantity. Federal Deposit Ins. Corporation v. Winton, C.C.A.Tenn., 131 F.2d 780, 782. One or some (indefinitely). Slegel v. Siegel, 135 N.J.Eq. 5, 37 A.2d 57, 58. "Any" does not necessarily mean only one person, but may have reference to more than one or to many. Doherty v. King, Tex.Civ. App., 183 S.W.2d 1004, 1007. As a synonym for "some". Kayser v. Occidental Life Ins. Co. of California, 234 Iowa 310, 12 N.W.2d 582, 587.

It is often synonymous with "either", State v. Antonio, 3 Brev. (S.C.) 562; Carr-Lowry Lumber Co. v. Martin, 144 Miss. 106, 109 So. 849, 850. And is given the full force of "every" or "all", Glen Alden Coal Co. v. City of Scranton, 282 Pa. 45, 127 A. 307, 308; Southern Ry. Co. v. Gaston County, 200 N.C. 780, 158 S.E. 481. Its generality may be restricted by the context, Drainage Dist. No. 1 of Bates County v. Bates County, Mo.Sup., 216 S.W. 949, 953. Thus, the giving of a right to do some act "at any time" is commonly construed as meaning within a reasonable time. Paulson v. Weeks, 80 Or. 468, 157 P. 590, 592, Ann.Cas. 1918D, 741. And the words "any other" following the enumeration of particular classes are to be read as "other such like," and include only others of like kind or character. Southern Ry. Co. v. Columbia Compress Co., C.C.A.S.C., 280 F. 344, 348.

ANYTHING. Sometimes used colloquially in the sense of whatever. Pittsburgh Plate Glass Co. v. H. Neuer Glass Co., C.C.A.Ohio, 253 F. 161, 164.

AORTA. The large artery of the body, about one and a half inches in diameter, through which blood is carried away from heart to be ultimately distributed to various parts of body. It is composed of three layers, an inner coat called the "intima," a middle coat called the "media," and an outer coat called the "adventia." Woelfle Connecticut Mut. Life Ins. Co. of Hartford, Conn., 234 Mo.App. 135, 112 S.W.2d 865, 870.

APANAGE. In old French law. A provision of lands or feudal superiorities assigned by the kings of France for the maintenance of their younger sons. An allowance assigned to a prince of the reigning house for his proper maintenance out of the public treasury. 1 Hallam, Mid. Ages, pp. ii, 88; Wharton.

APARTMENT. A part of a house occupied by a person, while the rest is occupied by another, or others. As to the meaning of this term, see People v. St. Clair, 38 Cal. 137.

APARTMENT HOTEL. Generally understood to apply to those houses which contain nonhousekeeping apartments without a kitchen or cooking

facilities, wherein the proprietor furnishes a restaurant for feeding the occupants of the different apartments. Waitt Const. Co. v. Chase, 188 N.Y. S. 589, 591, 197 App.Div. 327. A covenant prohibiting erection of an "apartment house" does not prohibit an apartment hotel containing one, two, and three room suites without kitchens or kitchenettes. Griswold Realty & Holding Corporation v. West End Avenue & Seventy-Fifth St. Corporation, 209 N.Y.S. 764, 766, 125 Misc. 30.

APARTMENT HOUSE. A building arranged in several suites of connecting rooms, each suite designed for independent housekeeping, but with certain mechanical conveniences, such as heat, light, or elevator services, in common to all families occupying the building. Konick v. Champneys, 108 Wash. 35, 183 P. 75, 77, 6 A.L.R. 459. Sometimes called a flat or flat house. Lignot v. Jaekle, 72 N.J.Eq. 233, 65 A. 221. It comes within the prohibition of a restrictive building covenant forbidding buildings designed for any purpose other than a private dwelling house. Taylor v. Lambert, 279 Pa. 514, 124 A. 169, 170. But it is not a "hotel." Satterthwait v. Gibbs, 288 Pa. 428, 135 A. 862, 864. A house for two families has been held to be an "apartment house" within a restrictive covenant. Austin v. Richardson, Tex.Com. App., 288 S.W. 180, 181.

An "apartment house" is not a hotel, but is a building used as a dwelling for several families, each living separate and apart. Peirce v. Kelner, 304 Pa. 509, 156 A. 61, 62. It is not a number of private dwellings, built one on another, but a collection of dwellings. A place for housing a number of people grouped in families assigned to different sections in the same structure. Fox v. Sumerson, 338 Pa. 545, 13 A.2d 1, 2.

APARTMENT HOUSE HI—JACKER. One who takes possession of an insolvent or abandoned apartment house business, collects as much rent as possible in advance and pays no bills of any kind, thus seriously affecting, if not destroying, the good will of the business Thompson v. Dubois, 215 Cal. 577, 11 P.2d 862, 863.

APATISATIO. An agreement or compact. Du Cange.

APERTA BREVIA. Open, unsealed writs.

APERTUM FACTUM. An overt act.

APERTURA' TESTAMENTI. In the civil law. A form of proving a will, by the witnesses acknowledging before a magistrate their having sealed it.

APEX. The summit or highest point of anything; the top; *e. g.,* in mining law, "apex of a vein." See Larkin v. Upton, 12 S.Ct. 614, 144 *U.S.* 19, 36 L.Ed. 330. An "apex" is all that portion of a terminal edge of a mineral vein from which the vein has extension downward in the direction of the dip. Stewart Mining Co. v. Ontario Mining Co., 35 S.Ct. 610, 614, 237 U.S. 350, 59 L.Ed. 989. Or it is the juncture of two dipping limbs of a fissure vein. Jim Butler Tonopah Mining Co. v. West End Consol. Mining Co., 38 S.Ct. 574, 576, 247 U. S. 450, 62 L.Ed. 1207.

The apex of ore vein or lode is ascent along line of its dip or outcropping, beyond which it extends no further to surface of land. Brugger v. Lee Yim, 12 Ca1.App.2d 38, 55 P.2d 564, 571.

APEX JURIS. The summit of the law; a legal subtlety; a nice or cunning point of law; close technicality; a rule of law carried to an extreme point, either of severity or refinement A term used to denote a stricter application of the rules of law than is indicated by the phrase *summum jus* (q. v.).

APEX RULE. In mining law. The mineral laws of the United States give to the locator of a mining claim on the public domain the whole of every vein the apex of which lies within his surface exterior boundaries, or within perpendicular planes drawn downward indefinitely on the planes of those boundaries; and he may follow a vein which thus apexes within his boundaries, on its dip, although it may so far depart from the perpendicular in its course downward as to extend outside the vertical side-lines of his location,. but he may not go beyond his end-lines or vertical planes drawn downward therefrom. This is called the apex rule. Rev.St.U.S. § 2322 (30 U.S.C.A. § 26) ; Stewart Mining Co v. Ontario Mining Co., 23 Idaho, 724, 132 P. 787, 792.

APHASIA. In medical jurisprudence. Loss of the faculty or power of articulate speech; a condition in which the patient, while retaining intelligence and understanding and with the organs of speech unimpaired, is unable (in "motor aphasia") to utter articulate words, or unable to vocalize the particular word which is in his mind and which he wishes to use, or utters words different from those he believes himself to be speaking, or (in "sensory aphasia" or apraxia) is unable to understand spoken or written language. *Sensory aphasia* includes *word blindness* and *word deafness,* visual and auditory aphasia. *Motor aphasia* often includes *agraphia,* or the inability to write words of the desired meaning. The seat of the disease is in the brain, but it is not a form of insanity.

APHONIA. In medical jurisprudence. Loss of the power of articulate speech in consequence of morbid conditions of some of the vocal organs. It may be incomplete, in which case the patient can whisper. It is to be distinguished from congenital dumbness, and from temporary loss of voice through extreme hoarseness or minor affections of the vocal cords, as also from aphasia, the latter being a disease of the brain without impairment of the organs of speech.

APICES JURIS NON SUNT JURA [JUS]. Extremities, or mere subtleties of law are not rules of law [are not law]. Co.Litt. 304b; 10 Coke, 126; Wing.Max. 19, max. 14; Broom, Max. 188. Legal principles must not be carried to their extreme consequences, regardless of equity and good sense. Salmond, Jurispr. 639. See Apex Juris.

APICES LITIGANDI. Extremely fine points, or subtleties of litigation. Nearly equivalent to the

modern phrase "sharp practice." "It is unconscionable in a defendant to take advantage of the *apices litigandi,* to turn a plaintiff around and make him pay costs when his demand is just." Per Lord Mansfield, in 3 Burr. 1243.

APNEA. In medical jurisprudence. Want of breath; difficulty in breathing; partial or temporary suspension of respiration; specifically, such difficulty of respiration resulting from over-oxygenation of the blood, and in this distinguished from "asphyxia" (q. v.), which is a condition resulting from a deficiency of oxygen in the blood due to suffocation or any serious interference with normal respiration. The two terms were formerly (but improperly) used synonymously.

APOCHA (also *Apoca).* Lat. In the civil law. A writing acknowledging payments; acquittance. It differs from acceptilation in this: that acceptilation imports a complete discharge of the former obligation whether payment be made or not; *apocha,* discharge only upon payment being made. Calvin. See Antapocha.

APOCHIE ONERATORLE. In old commercial law. Bills of lading.

APOCRISARIUS. In civil law. A messenger; an ambassador.

In ecclesiastical law. One who answers for another. An officer whose duty was to carry to the emperor messages relating to ecclesiastical matters, and to take back his answer to the petitioners. An officer who gave advice on questions of ecclesiastical law. An ambassador or legate of a pope or bishop. Spelman.

A messenger sent to transact ecclesiastical business and report to his superior ; an officer who had charge of the treasury of a monastic edifice ; an officer who took charge of opening and closing the doors. Du Cange ; Spelman ; Calvinus, Lex.

APOCRISARIUS CANCELLARIUS. In the civil law. An officer who took charge of the royal seal and signed royal dispatches.

Called, also, *secretarius, consiliarius* (from his giving advice) ; *referendarius; a consiliis* (from his acting as counsellor) ; a *responsis,* or *responsalis.*

APOGEAN TIDES. When moon is farthest from earth, its tide-producing power is diminished and tides at such time exhibit a decreased rise and fall, and such tides are called "apogean tides." Miller v. Bay-To-Gulf, 141 Fla. 452, 193 So. 425, 428.

APOGRAPHIA. In civil law. An examination and enumeration of things possessed; an inventory. Calvinus, Lex.

APOPLEXY. In medical jurisprudence. The failure of consciousness and suspension of voluntary motion from suspension of the functions of the cerebrum.

The group of symptoms arising from rupture of a minute artery and consequent hemorrhage into the substance of the brain or from the lodgment of a minute clot in one of the cerebral arteries.

The symptoms consist usually of sudden loss of consciousness, muscular relaxation, lividity of the face and slow stertorous respiration, lasting from a few hours to several days. Death frequently ensues. If consciousness returns, there is found paralysis of some of the voluntary muscles, very frequently of the muscles of the face, arm, and leg upon one side, giving the symptom of hemiplegia. There is usually more or less mental impairment, which presents no uniform character, but varies indefinitely.

By apoplexy is meant a break or rupture of a blood vessel in the brain, not produced by any external cause. Robinson v. ./Etna Life Ins. Co., Tex.Com.App., 276 S.W. 900, 902.

APOSTACY (also spelled *Apostasy).* In English law. The total renunciation of Christianity, by embracing either a false religion or no religion at all. This offense can take place only in such as have once professed the Christian religion. 4 Bl.Comm. 43; 4 Steph.Comm. 231.

APOSTATA. In civil and old English law. An apostate; a deserter from the faith; one who has renounced the Christian faith. Cod. 1, 7; Reg.Orig. *71b.*

APOSTATA CAPIENDO. An obsolete English writ which issued against an apostate, or one who had violated the rules of his religious order. It was addressed to the sheriff, and commanded him to deliver the defendant into the custody of the abbot or prior. Reg.Orig. 71, 267; Jacob; Wharton.

APOSTILLE, Appostille. L. Fr. An addition; a marginal note or observation. Kelham.

APOSTLES. In English admiralty practice. A term borrowed from the civil law, denoting brief dismissory letters granted to a party who appeals from an inferior to a superior court, embodying a statement of the case and a declaration that the record will be transmitted.

This term is still sometimes applied in the admiralty courts of the United States to the papers sent up or transmitted on appeals.

APOSTOLI. In civil law. Certificates of the inferior judge from whom a cause is removed, directed to the superior. Dig. 49, 6. See Apostles.

Those sent as messengers. Spelman, Gloss.

APOSTOLUS. A messenger; an ambassador, legate, or nuncio. Spelman.

APOTHECA. In the civil law. A repository; a place of deposit, as of wine, oil, books, etc. Calvin.

APOTHECARY. Any person who keeps a shop or building where medicines are compounded or prepared according to prescriptions of physicians, or where medicines are sold. Com. v. Fuller, 2 Walk. (Pa.) 550.

In England and Ireland an apothecary is a member of an inferior branch of the medical profession and is licensed by the Apothecaries Company to practice medicine as well as to sell drugs.

The term "druggist" properly means one whose occupation is to buy and sell drugs without compounding or preparing them. The term therefore has a much more limited and restricted meaning than the word "apothecary," and there is little difficulty in concluding that the term "druggist" may be applied in a technical sense to persons who buy and sell drugs. State v. Donaldson, 41 Minn. 74, 42 N. W. 781.

APP. CT. Appellate Court.

APPARATOR. A furnisher or provider. Formerly the sheriff, in England, had charge of certain county affairs and disbursements, in which capacity he was called *"apparator comitatus"* (apparator for the county), and received therefor a considerable emolument. Cowell.

APPARATUS. An outfit of tools, utensils, or instruments adapted to accomplishment of any branch of work or for performance of experiment or operation. McClintock & Irvine Co. v. 'Etna Explosives Co., 260 Pa. 191, 103 A. 622, 623, Ann. Cas.1918E, 1078. A group or set of organs concerned in performance of single function. First State Bank of Perkins v. Pulliam, 112 Okl. 22, 239 P. 595, 596. A generic word of the most comprehensive significance which may mean implements and an equipment of things provided, and adapted as a means to some end. Bruce v. Sibeck, 25 Cal.App.2d 691, 78 P.2d 741, 743.

As used in statutes granting exemption from execution, etc., "apparatus" means a complex device or machine designed for the accomplishment of a special purpose; a complex instrument or appliance, mechanical or chemical, for a specific action or operation; machinery; mechanism; as a newspaper printing press, Harris v. Townley, Tex. Civ.App., 161 S.W. 5; or four pool tables, Harris v. Todd, Tex.Civ.App., 158 S.W 1189; but not a threshing outfit, Corner v. Powell, Tex.Civ.App., 189 S.W. 88, 91; nor a well-drilling rig, consisting of boiler, engine, and other parts of complicated machinery, Thresher v. McEvoy, Tex.Civ. App., 193 S.W. 159, 160. In re Willis, D.C.Tex., 292 F. 872, 873, it was said that the term "apparatus" is practically synonymous with "tools."

APPAREL. The term is said to derive from two sources, "apparel" from the Latin "ad," meaning to, and "par," meaning equal, to point out the means by which outwardly one keeps even or in line with his group or class. In re Steimes' Estate, 270 N.Y.S. 339, 150 Misc. 279 (a will case).

APPARENT. That which is obvious, evident, or manifest; what appears, or has been made manifest; appearing to the eye or mind. Walker v. John Smith, T., 199 Ala. 514, 74 So. 451, 453; In respect to facts involved in an appeal or writ of error, that which is stated in the record. An error discovered by close scrutiny of the entire evidence is not "apparent." Stewart v. McAllister, Tex.Civ.App., 209 S.W. 704, 706.

"Apparent" means "open to view," "capable of being easily understood," "evident," "seeming," rather than "true" or "real," "synonymous with," "likely," "probable," or "obvious" and as meaning primarily, "capable of being seen or easily seen," "open to view," "visible to the eye," "within sight or view," and, secondarily, "clear or manifest to the understanding," "plain," "evident," "obvious," "known," "palpable," "indubitable," while "indubitable" has been defined as meaning "certain" or "unquestionable," which is synonymous with "sure." Stevenson v. State, Del., 1 Terry 268, 8 A.2d 914, 915 (in statute requiring driver to stop after automobile accident).

The word "apparent" within rule that use of realty must be apparent to create easement by implication on severance of unity of ownership of dominant and servient tenements does not necessarily mean "visible", but means that easement's indicia, careful inspection of which by person ordinarily conversant with subject would disclose such use, must be plainly visible. Romanchuk v. Plotkin, 215 Minn. 156, 9 N.W.2d 421, 425.

APPARENT AGENCY, See Agency.

APPARENT AUTHORITY. In the law of agency, such authority as the principal knowingly permits the agent to assume, or which he holds the agent out as possessing; such authority as he appears to have by reason of the actual authority which he has; such authority as a reasonably prudent man, using diligence and discretion, in view of the principal's conduct, would naturally suppose the agent to possess. Iowa Loan & Trust Co. v. Seaman, 203 Iowa 310, 210 N.W. 937, 940; Kissell v. Pittsburgh, Ft. W. & C. Ry. Co., 194 Mo.App. 346, 188 S.W. 1118, 1121; Brager v. Levy, 122 Md. 554, 90 A. 102, 104; Atto v. Saunders, 77 N.H. 527, 93 A. 1037, 1039; Campbell Paint & Varnish Co. v. Ladd Furniture & Carpet Co., Tex.Civ.App., 83 S.W.2d 1095, 1097; Humble Oil & Refining Co. v. Wood, Tex.Civ.App., 94 S.W.2d 573, 574.

It includes the power to do whatever is usually done and necessary to be done in order to carry into effect the principal power conferred. Oliver v. United States Fidelity & Guaranty Co., 176 N.C. 598, 97 S.E. 490, 491. Such authority as a principal intentionally or by want of ordinary care causes or allows third person to believe that agent possesses. Fireman's Fund Indemnity Co. v. Longshore Beach and Country Club, Inc., 127 Conn. 493, 18 A.2d 347, 349.

It is not actual authority and may often be authority not actually possessed by agent, but is such as principal holds agent out as possessing. Northwestern Mut. Life Ins. Co. v. Steckel, 216 Iowa 1189, 250 N.W. 476; Herbert v. Langhoff, La.App., 164 So. 262, 266.

"Apparent authority" of an agent must be determined by what the principal does, rather than by acts of the agent. Grismore v. Consolidated Products Co., 232 Iowa 328, 5 N.W.2d 646, 651.

It must be traceable to the principal and cannot be established solely by acts and conduct of agent, and principal is only liable for the appearance of authority caused by him. Storms v. United Grain & Millworkers' Union, 64 Ohio App. 19, 27 N.E.2d 781, 783.

APPARENT DANGER. As used with reference to the doctrine of self-defense in homicide, means such overt actual demonstration, by conduct and acts, of a design to take life or do some great personal injury, as would make the killing apparently necessary to self-preservation. Modesett v. Emmons, Tex.Com.App., 292 S.W. 855, 856.

Under a statute providing that it shall not be a defense to an action for injuries to an employee that the dangers

inherent or apparent in the employment contributed to the injury, an "apparent danger" is one the existence of which the employee has knowl'Aige, actual or constructive. Standard Steel Car Co. v. Martinecz, 66 Ind.App. 672, 113 N.E. 244, 248.

APPARENT DEFECTS. In a thing sold, are those which can be discovered by simple inspection. Code La. art. 2497 (Civil Code, § 2521). See, also, Woolley v. Ablah, 119 Kan. 380, 240 P. 266, 269.

APPARENT EASEMENT. See Easement.

APPARENT HEIR. In English law. One whose right of inheritance is indefeasible, provided he outlive the ancestor. 2 Bl.Comm. 208. See, also, Heir Apparent. In Scotch law. He is the person to whom the succession has actually opened. He is so called until his regular entry on the lands by service or infeftment on a precept of *Clare constat.*

APPARENT NECESSITY. In actions under the Alabama Homicide Act, "apparent necessity" which will justify killing in self-defense must be such as to impress a reasonable man of its presence and imminence, and must so impress defendant at the time of the fatal shot. Drummond v. Drummond, 212 Ala. 242, 102 So. 112, 114.

APPARITIO. In old practice. Appearance; an appearance. *Apparitio in judicio,* an appearance in court. Bract. fol. 344. *Post apparitionem,* after appearance. Fleta, lib. 6, c. 10, § 25.

APPARITOR. An officer or messenger employed to serve the process of the spiritual courts in England and summon offenders. Cowell.

In the civil law. An officer who waited upon a magistrate or -superior officer, and executed his commands. Calvin.; Cod. 12, 53-57.

APPARLEMENT. In old English law. Resemblance; likelihood; as apparlement of war. St. 2 Rich. II. st. 1, c. 6; Cowell.

APPARURA. In old English law the apparura were furniture, implements, tackle, or apparel. Carucarum *apparura,* plow-tackle. Cowell.

APPEAL. In civil practice. The complaint to a superior court of an injustice done or error committed by an inferior one, whose judgment or decision the court above is called upon to correct or reverse.

The removal of a cause from a court of inferior to one of superior jurisdiction, for the purpose of obtaining a review and retrial. Hall v. Kincaid, 64 Ind.App. 103, 115 N.E. 361, 365. Lea County State Bank v. McCaskey Register Co., 39 N.M. 454, 49 P.2d 577, 579.

In general terms a resort to an upper court or tribunal. State ex rel. School Dist. No. 8 v. Lensman, 108 Mont. 118, 88 P.2d 63, 65. A rehearing by a superior court on both law and fact, a process of civil law origin, and the usual and appropriate mode of review for cases originating in a court of equity. Sohland v. Baker, 15 Del.Ch. 431, 141 A. 277, 283, 58 A.L.R. 693.

The word "appeal" has no absolutely fixed and definite meaning but may be used to denote the review by a court of the action of some board or administrative officer. In re Determination of Relative Rights to Use of Waters of Deschutes River, 108 P.2d 276, 281, 282, 165 Or. 435. An "appeal" is a creature of statute, not a constitutional or inherent right. Carilli v. Hersey, 303 Mass. 82, 20 N.E.2d 492, 495. It is merely a continuation of original lawsuit. Bowersock v. Missouri Valley Drainage Dist. of Holt County, 237 Mo.App. 346, 168 S.W.2d 479, 481. Patterson v. Old Dominion Trust Co., 149 Va. 597, 140 S.E. 810, 813. It has become a term of general application in law, with meaning depending on statutory provisions respecting appellate proedure. Cino v. Driscoll, 130 N.J.L. 535, 34 A.2d 6, 8.

Appeal is sometimes used to denote the nature of appellate jurisdiction, as distinguished from original jurisdiction, without any particular regard to the mode by which a cause is transmitted to a superior jurisdiction. Dorris Motor Car Co. v. Colburn, 307 Mo. 137, 270 S.W. 339, 346. "Appeal" has no conclusive meaning, and it is necessary in each instance to look to the particular act giving an appeal, to determine powers to be exercised by the appellate court. McCauley v. Imperial Woolen Co., 261 Pa. 312, 104 A. 617, 620.

The fundamental difference between an "appeal" and an action to "review" is that in the case of appeal the tribunal by which the first determination was made is not a party to the proceeding to review, while, in an action to review, the tribunal which made the determination is a party to the proceeding to review. Milwaukee County v. Industrial Commission, 228 Wis. 94, 279 N.W. 655, 657, 658.

An "appeal" in equity is a trial de novo. Simmons v.. Stern, C.C.A.N.M., 9 F.2d 256, 259.

"Appeal" may also be used to denote the act of invoking another judicial forum for the trial. Newell v. Kalamazoo Circuit Judge, 215 Mich. 153, 183 N.W. 907, 908. See Appealed. As used in statutes authorizing taxpayers or parties to condemnation proceedings to appeal, the term often has its nontechnical sense meaning to "apply for" or "ask." Purcell Bank & Trust Co. of Purcell v. Byars, 66 Okl. 70, 167 P. 216, 218.

An "appeal" is a step in a judicial proceeding, and in legal contemplation there can be no appeal where there has been no decision by a judicial tribunal. Two things are essential to an appeal in its proper sense : First, the decision of a judicial tribunal, and, second, a superior court invested with authority to review the decision of the inferior tribunal. People ex rel. Nelson Bros. Storage & Furniture Co. v. Fisher, 273 Ill. 228, 25 N.E.2d 785, 787.

"Appeal" differs from trial in that it is a review on original record after that has been made in accordance with well-recognized principles of judicial procedure. Koukly v. Weber, 277 N.Y.S. 39, 154 Misc. 659.

In criminal practice. A formal accusation made by one private person against another of having committed some heinous crime. 4 Bl. Comm. 312.

*Appeal* was also the name given to the proceeding in English law where a person, indicted of treason or felony, and arraigned for the same, confessed the fact before plea pleaded, and *appealed,* or accused others, his accomplices in the same crime, in order to obtain his pardon. In this case he was called an "approver" or "prover," and the party appealed or accused, the "appellee." 4 Bl.Comm. 330. Appeals have been abolished by statute.

Cross Appeal

Where both parties to a judgment appeal therefrom, the appeal of each is called a "cross-appeal" as regards that of the other. 3 Steph.Comm. 581.

Legislation

The act by which a member of a legislative body who questions the correctness of a decision

of the presiding officer, or "chair," procures a vote of the body upon the decision.

Old French Law

A mode of proceeding in the lords' courts, where a party was dissatisfied with the judgment of the peers, which was by accusing them of having given a false or malicious judgment, and offering to make good the charge by the duel or combat. This was called the "appeal of false judgment." Montesq. Esprit des Lois, liv. 28, c. 27.

Writ of Error Distinguished

The distinction between an appeal and a writ of error is that an appeal is a process of civil law origin, and removes a cause entirely, subjecting the facts, as well as the law, to a review and revisal; but a writ of error is of common law origin, and it removes nothing for re-examination but the law. Cunningham v. Neagle, 10 S.Ct. 658, 135 U.S. 1, 34 L.Ed. 55; Buessel v. U. S., C.C.A. Conn., 258 F. 811, 814. The present tendency is to ignore the distinction between "writ of error" and "appeal," and, when found in modern statutes, the meaning given "appeal" must be gathered from the language of the statute itself. Widgins v. Norfolk & W. Ry. Co., 142 Va. 419, 128 S.E. 516, 518.

APPEAL BOND. The bond given on taking an appeal, by which the appellant and his sureties are bound to pay damages and costs if he fails to prosecute the appeal with effect. Omaha Hotel Co. v. Kountze, 2 S.Ct. 911, 107 U.S. 378, 27 L.Ed. 609. A general purpose of appeal bonds is to discourage vexatious and frivolous appeals. State v. Coletti, 102 Kan. 523, 170 P. 995, 997. To protect those interested in the judgment. Richmond v. Williamson, 16 Wash.2d 194, 132 P.2d 1031, 1033.

The sole and only purpose of "appeal bond" is to stay issuance of execution until cause can be passed upon and disposed of by appellate court. State ex rel. Gnekow v. U. S. Fidelity & Guaranty Co., Mo.App., 150 S.W.2d 581, 584.

APPEAL IN FORMA PAUPERIS. A privilege given indigent person to prosecute an appeal, otherwise and independently allowable, without payment of fees and costs incident to such prosecution. Millslagle v. Olson, C.C.A.Neb., 130 F.2d 212, 213. See, also, In Forma Pauperis.

APPEALED. In a sense not strictly technical, this word may be used to signify the exercise by a party of the right to remove a litigation from one forum to another; as where he removes a suit involving the title to real estate from a justice's court to the common pleas. Lawrence v. Souther, 8 Metc. (Mass.) 166.

APPEAR. In practice. To be properly before a court; as a fact or matter of which it can take notice. To be in evidence; to be proved. "Making it *appear* and proving are the same thing." Freem. 53. Coming into court by a party to a suit, whether plaintiff or defendant. Madison v. State, 31 Ala.App. 602, 20 So.2d 541, 542; Bennett v. Rodgers, 205 Mo.App. 458, 225 S.W. 101. See Appearance.

Frequently used in judicial proceedings as meaning "clear to the comprehension" when applied to matters of opinion or reasoning, and "satisfactorily or legally known or made known", when used in reference to facts of evidence. Blackshear v. Liberty Mut. Ins. Co., 26 S.E.2d 793, 804, 69 Ga.App. 790. Facts "appear" when the evidence from which facts may be found is introduced, and presumptions disappear when facts appear. Christiansen v. Hilber, 282 Mich. 403, 276 N.W. 495, 497.

APPEAR OF RECORD. A substitution of trustee under deed of trust "appears of record" in the office of the chancery clerk, by being actually spread at large on the record. King v. Jones, 121 Miss. 319, 83 So. 531.

APPEARANCE. In practice. A coming into court as party to a suit, whether as plaintiff or defendant. Stephens v. Ringling, 102 S.C. 333, 86 S.E. 683, 685. The formal proceeding by which a defendant submits himself to the jurisdiction of the court. Flint v. Comly, 95 Me. 251, 49 A. 1044. The voluntary submission to a court's jurisdiction. Pacilio v. Scarpati, 300 N.Y.S. 473, 478, 165 Misc. 586; Braman v. Braman, 258 N.Y.S. 181, 186, 236 App.Div. 164.

"Appearance" is the act of appearing, coming, or being in sight, becoming visible or clear to apprehension of the mind, of being known as subject of observation or comprehension, or as a thing proved, of being obvious or manifest. Hallack & Howard Lumber Co. v. Bagly, 100 Colo. 402, 68 P.2d 442, 443.

Appearance anciently meant an actual coming into court, either in person or by attorney. Appearance may be made by the party in person or by his agent. Everett Ry., Light & Power Co. v. U. S., D.C.Wash., 236 F. 806, 808. But *in criminal cases* the personal appearance of the accused in court is often necessary.

An appearance may be either *general* or *special;* the former is a simple and unqualified or unrestricted submission to the jurisdiction of the court, the latter a submission to the jurisdiction for some specific purpose only, not for all the purposes of the suit. Louisville & N. R. Co. v. Industrial Board of Illinois, 282 Ill. 136, 118 N.E. 483, 485. A special appearance is for the purpose of testing the sufficiency of service or the jurisdiction of the court; a general appearance is made where the defendant waives defects of service and submits to the jurisdiction. State v. Huller, 23 N.M. 306, 168 P. 528, 534, 1 A.L.R. 170.

An appearance may also be either *compulsory* or *voluntary,* the former where it is compelled by process served on the party, the latter where it is entered by his own will or consent, without the service of process, though process may be outstanding. 1 Barb.Ch.Pr. 77. It is said to be *optional* when entered by a person who intervenes in the action to protect his own interests, though not joined as a party; it occurs in chancery practice, especially in England; *conditional,* when coupled with conditions as to its becoming or being taken as a general appearance; *gratis,* when made by a party to the action, but before the service of any process or legal notice to appear ; *de bene esse,* when made provisionally or to remain good only upon a future contingency ; or when designed to permit a party to a proceeding to refuse to submit his person to the jurisdiction of the court unless it is finally determined that he has forever waived that right. Farmers Trust Co. v. Alexander, 334 Pa. 434, 6 A.2d 262, 265; *subsequent,* when made by a defendant after an appearance has already been entered for him by the plaintiff ; *corporal,* when the person is physically present in court.

An answer constitutes an "appearance." Wieser v. Richter, 247 Mich. 52, 225 N.W. 542, 543. A party who an-

swers, consents to a continuance, goes to trial, takes an appeal, or does any other substantial act in a cause, although he has not been served with summons, is deemed to have entered his "appearance" unless he objects and preserves his protests to the jurisdiction of his person. Robinson v. Bossinger, 195 Ark. 445, 112 S.W.2d 637, 640. Acts of an attorney in prosecuting an action on behalf of his client constitute an "appearance." Pacilio v. Scarpati, 300 N.Y.S. 473, 165 Misc. 586.

Appearance by Attorney

This term and "appearance by counsel" are distinctly different, the former being the substitution of a legal agent for the personal attendance of the suitor, the latter the attendance of an advocate without whose aid neither the party attending nor his attorney in his stead could safely proceed; and an appearance by attorney does not supersede the appearance by counsel. Mercer v. Watson, 1 Watts (Pa.) 351. See In re Ford's Estate, 163 N.Y.S. 960, 98 Misc. 100.

Appearance Day

The day for appearing; that on which the parties are bound to come into court. Cruger v. McCracken (Tex.Civ.App.) 26 S.W. 282. Compare City of Decatur v. Barteau, 260 Ill. 612, 103 N.E. 601, 602.

Appearance Docket

A docket kept by the clerk of the court, in which appearances are entered, containing also a brief abstract of all the proceedings in the cause. See McAdams v. Windham, 191 Ala. 287, 68 So. 51, 52.

Notice of Appearance

A notice given by defendant to a plaintiff that he appears in the action in person or by attorney.

APPEARAND HEIR. In Scotch law. An apparent heir. See Heir Apparent.

APPELLANT. The party who takes an appeal from one court or jurisdiction to another. Used broadly or nontechnically, the term includes one who sues out a writ of error. Widgins v. Norfolk & W. Ry. Co., 142 Va. 419, 128 S.E. 516, 518.

APPELLATE. Pertaining to or having cognizance of appeals and other proceedings for the judicial review of adjudications.

Word "appellate" has a general meaning, and it has a specific meaning indicating the distinction between original jurisdiction and appellate jurisdiction. Woodruff v. Bell, 143 Kan. 110, 53 P.2d 498, 499.

APPELLATE COURT. A court having jurisdiction of appeal and review; a court to which causes are removable by appeal, *certiorari,* or error; a reviewing court, and, except in special cases where original jurisdiction is conferred, not a "trial court" or court of first instance. Sanborn v. Pacific Mut. Life Ins. Co., 42 Cal.App.2d 99, 108 P.2d 458, 461; Jackson v. Chesapeake & 0. Ry. Co., 179 Va. 642, 20 S.E.2d 489, 493.

APPELLATE JURISDICTION. The power and authority to take cognizance of a cause and proceed to its determination, not in its initial stages, but only after it has been finally decided by an inferior court, *i. e.,* the power of review and determination on appeal, writ of error, certiorari, or other similar process. Jurisdiction on appeal; jurisdiction to revise or correct the proceedings in a cause already instituted and acted upon by an inferior court, or by a tribunal having the attributes of a court. Illinois Cent. R. Co. v. Dodd, 105 Miss. 23, 61 So. 743, 49 L.R.A.,N.S., 565. The term includes proceedings in error. Miami County v. City of Dayton, 92 Ohio St. 179, 110 N.E. 726, 727.

If court's jurisdiction is appellate, it has no authority to determine a question in an action originally instituted in it. Rogers v. Leahy, 296 Ky. 44, 176 S.W.2d 93, 95, 149 A. L.R. 1267.

Exercise of "appellate jurisdiction" involves power not only to correct errors in judgment under review, but to make such disposition of causes as justice may require in order that a correct principle of decision, arising since judgment appealed from, and having a bearing upon the right disposition of the cause, may be passed on by trial court, whose judgment will be vacated and cause remanded for further proceeding to that end in proper cases. Yates v. St. Johns Beach Development Co., 122 Fla. 141, 165 So. 384, 385.

APPELLATIO. Lat. An appeal.

APPELLATOR. An old law term having the same meaning as "appellant" *(q. v.).*

In the civil law, the term was applied to the judge ad quem, or to whom an appeal was taken. Calvin.

APPELLEE. The party in a cause against whom an appeal is taken; that is, the party who has an interest adverse to setting aside or reversing the judgment. Slayton v. Horsey, 97 Tex. 341, 78 S.W. 919. Sometimes also called the "respondent.

In a nontechnical sense, "appellee" may include a defendant in writ of error. Widgins v. Norfolk & W. Ry. Co., 142 Va. 419, 128 S.E. 516, 518.

In old English law. Where a person charged with treason or felony pleaded guilty and turned approver or "king's evidence," and accused another as his accomplice in the same crime, in order to obtain his own pardon, the one so accused was called the "appellee." 4 Bl.Comm. 330.

APPELLO. Lat. In the civil law. I appeal. The form of making an appeal *apud acta.* Dig. 49, 1, 2.

APPELLOR. In old English law. A criminal who accuses his accomplices, or who challenges a jury. See Approver.

APPEND. To add or attach. American Cannel Coal Co. v. Indiana Cotton Mills, 78 Ind.App. 115, 134 N.E. 891, 893.

APPENDAGE. Something added as an accessory to or the subordinate part of another thing. American Cannel Coal Co. v. Indiana Cotton Mills, 78 Ind.App. 115, 134 N.E. 891, 893.

An "appendage" for a schoolhouse includes a well on the school premises. Schofield v. School Dist. No. 113, Labette County, 105 Kan. 343, 184 P. 480, 481, 7 A.L.R. 788. But "appendages" of a railroad do not include Liberty bonds pledged to indemnify a surety on its appeal bond, or cash which was not indispensable to enjoyment of the property nor to its operation. Jackman v. St. Louis & H. R. Co., 304 Mo. 319, 263 S.W. 230, 231.

APPENDANT; A thing annexed to or belonging to another thing and passing with it; a thing of inheritance belonging to another inheritance Which is more worthy; as an advowson, common, etc., which may be appendant to a manor, common of fishing to a freehold, a seat in a church to a house, etc. It differs from appurtenance, in that appendant must ever be by prescription, *i. e.,* a personal usage for a considerable time, while an appurtenance may be created at this day; for if a grant be made to a man and his heirs, of common in such a moor for his beasts levant or couchant upon his manor, the commons are appurtenant to the manor, and the grant will pass them. Meek v. Breckenridge, 29 Ohio St. 648. See Appurtenance.

APPENDITIA. The appendages or appurtenances of an estate or house, dwelling, etc.; thus, *pent-houses* are the *appenditia domes.* Cowell.

APPENDIX. A printed volume, used on an appeal to the English house of lords or privy council, containing the documents and other evidence presented in the inferior court and referred to in the cases made by the parties for the appeal. Answering in some respects to the "paper-book" or "case" in American practice.

APPENSURA. Payment of money by weight instead of by count. Cowell.

APPERTAIN. To belong to; to have relation to; to be appurtenant to. Chattel mortgages, Ferguson v. Steen, Tex.Civ.App., 293 S.W. 318, 320; landlord and tenant, State v. Bodden, 166 Wis. 219, 164 N.W. 1009, 1011. To be used in connection with (sales contract), McVeety v. Hayes, 111 Wash. 457, 191 P. 401, 402. See, also, Appurtenance; Appurtenant.

APPERTAINING. Connected with in use or occupancy. It does not necessarily import contiguity, as does "adjoining," and is therefore not synonymous with it: Miller v. Mann, 55 Vt. 475, 479. Peculiar to (sale of goods), Herndon v. Moore, 18 S.C. 339.

APPLE CIDER VINEGAR. Vinegar made from evaporated apples by treating them with a certain percentage of water squeezed out again as apple juice. People v. Douglas Packing Co., 236 N.Y. 1, 139 N.E. 759, 760.

APPLIANCE. Refers to machinery and all instruments used in operating it, and is to be distinguished from word "materials," which includes everything of which anything is made. Things applied to or used as a means to an end. Roberts v. City of Los Angeles, 61 P.2d 323, 330, 7 Cal.2d 477. An "appliance" is a mechanical thing, a device or apparatus. One Black Mule v. State, 204 Ala. 440, 85 So. 749.

The term has been applied to a railroad track, Hines v. Kelley, Tex.Civ.App., 226 S.W. 493, 496; motor tracks in a coal mine, Jaggie v. Davis Colliery Co., 75 W.Va. 370, 84 S.E. 941; an automobile, Ross v. Tabor, 53 Cal.App. 605, 200 P. 971, 973; a telephone lineman's safety belt, Boone v. Lohr, 172 Iowa 440, 154 N.W. 591, 592; and a plank on which a painting foreman was working, Peterson v. Beck, 27 Cal.App. 571, 150 P. 788, 789; but not, however, to a station water tank, rope, or scaffold used thereon, by a painter, McFarland v. Chesapeake & 0. Ry. Co., 177 Ky. 551, 197 S.W. 944, 947; nor to a moving picture machine, Balcom v. Ellintuch & Yarfitz, 179 App.Div. 548, 166 N.Y.S. 841, 842; nor the steps of a caboose, Cincinnati, N. 0. & T. P. Ry. Co. v. Goldston, 163 Ky. 42, 173 S.W. 161, 162.

APPLICABLE. Fit, suitable, pertinent, or appropriate. Thomas v. City of Huntington, 80 Ind. App. 476, 141 N.E. 358, 359. Brought into actual contact with. People v. Buffalo Cold Storage Co., 185 N.Y.S. 790, 794, 113 Misc. 479.

When a constitution or court declares that the common law is in force in a particular state so far as it is *applicable,* it is meant that it must be applicable to the habits and conditions of the community, as well as in harmony with the genius, the spirit, and the objects of their institutions. Wagner v. Bissell, 3 Iowa 402.

When a constitution prohibits the enactment of local or special laws in all cases where a general law would be applicable, a general law should always be construed to be applicable, in this sense, where the entire people of the state have an interest in the subject. But where only a portion of the people are affected, as in locating a county-seat, it will depend upon the facts and circumstances of each particular case whether such a law would be applicable. Evans v. Job, 8 Nev. 322.

APPLICABLE LOCAL LAW. Term used to determine the persons who come within the term heirs and is the law which would be used to ascertain the heirs of the designated ancestor if he had owned the property and had died intestate. Restatement, Property, § 305e.

APPLICANT. An applicant, as for letters of administration, is one who is entitled thereto, and who files a petition asking that letters be granted. Jerauld v. Chambers, 44 Cal.App. 771, 187 P. 33.

APPLICARE. Lat. In old English law. To fasten to; to moor (a vessel). Anciently rendered, "to apply." Hale, de Jure Mar.

APPLICATIO EST VITA REGULIE. Application is the life of a rule. 2 Bulst. 79.

APPLICATION. A putting to, placing before, preferring a request or petition to or before a person. The act of making a request for something. In re Meyer, 166 N.Y.S. 505, 100 Misc. 587. A written request to have a certain quantity of land at or near a certain specified place. Biddle v. Dougal, 5 Bin. (Pa.) 151. A petition. Scott v. Strobach, 49 Ala. 477, 489. Gardner v. Goodner Wholesale Grocery Co., 113 Tex. 423, 256 S.W. 911, 913. The use or disposition made of a thing. A bringing together, in order to ascertain some relation or establish some connection; as the *application* of a rule or principle to a case or fact.

Insurance

The preliminary request, .declaration, or statement made by a party applying for an insurance policy, such as one on his life, or against fire. Whipple v. Prudential Ins. Co. of America, 222 N.Y. 30, 118 N.E. 211, 212.

An "application" is no more than proposition to insurance company and must be accepted before there can be meeting of minds required to form binding contract.

Brouster v. John Hancock Mut. Life Ins. Co., Mo.App., 171 S.W.2d 775, 777; Kronjaeger v. Travelers Ins. Co., 124 W.Va. 730, 22 S.E.2d 689, 692.

Payments

Appropriation of a payment to some particular debt; or the determination to which of several demands a general payment made by a debtor to his creditor shall be applied.

Mere uncommunicated intention or belief on part of debtor as to application of payment to creditor is not such an appropriation as constitutes "application" by him. Delaware Dredging Co. v. Tucker Stevedoring Co., C.C.A.Pa., 25 F.2d 44, 46.

Purchase Money

The disposition made of the funds received by a trustee on a sale of real estate held under the trust.

APPLY. To make a formal request or petition, usually in writing, to a court, officer, board, or company, for the granting of some favor, or of some rule or order, which is within his or their power or discretion. For example, to apply for an injunction, for a pardon, for a policy of insurance, or for a receiver. In re Bucyrus Road Machinery Co., C.C.A.Ohio, 10 F.2d 333, 334.

To use or employ for a particular purpose; to appropriate and devote to a particular use, object, demand, or subject-matter. Thus, to apply payments to the reduction of interest. Foley v. Hastings, 107 Conn. 9, 139 A. 305, 306. See Appropriate.

To put, use, or refer, as suitable or relative; to co-ordinate language with a particular subject-matter; as to apply the words of a statute to a particular state of facts.

The word "apply" is used in connection with statutes in two senses. When construing a statute, in describing the class of persons, things, or functions which are within its scope; as that the statute does not "apply" to transactions in interstate commerce. When discussing the use made of a statute, in referring to the process by which the statute is made operative; as where the jury is told to "apply" the statute of limitation if they find that the cause of action arose before a given date. Brandeis, J., dissenting in Dahnke-Walker Milling Co. v. Bondurant, 42 S.Ct. 106, 110, n., 257 U.S. 282, 66 L. Ed. 239.

APPOINT. To designate, ordain, prescribe, nominate. People v. Fitzsimmons, 68 N.Y. 519; Rhodes v. City of Tacoma, 97 Wash. 341, 166 P. 647. To allot, set apart. Heisler v. Robbins, 17 Ariz. 429, 153 P. 771, 772. To fix, constitute, or ordain, prescribe, settle, also to assign authority to a particular use, task or office, allot, designated. Lambach v. Anderson, 228 Iowa 1173, 293 N.W. 505, 510.

"Appoint" is used where exclusive power and authority is given to one person, officer, or body to name persons to hold certain offices. State v. Doss, 102 W.Va. 162, 134 S.E. 749. It is usually distinguished from "elect," meaning to choose by a vote of the qualified voters of the city. State ex rel. Smith v. Bowman, 184 Mo.App. 549, 170 S.W. 700, 701. But the distinction is not invariably observed. Schaffner v. Shaw, 191 Iowa 1047, 180 N.W. 853, 854.

APPOINTEE. A person who is appointed or selected for a particular purpose; as the appointee under a power is the person who is to receive the benefit of the power.

"Appointed" and "elected" are used interchangeably. Van Cleve v. Wallace, 216 Minn. 500, 13 N.W.2d 467, 469.

APPOINTMENT. The designation of a person, by the person or persons having authority therefor, to discharge the duties of some office or trust. In re Nicholson's Estate, 104 Colo. 561, 93 P.2d 880, 884. See, also, Power of Appointment.

The exercise of a right to designate the person or persons who are to take the use of real estate. 2 Washb.Real Prop. 302; Merchants' Loan & Trust Co. v. Patterson, 308 Ill. 519, 139 N.E. 912, 919. The act of a person in directing the disposition of property, by limiting a use, or by substituting a new use for a former one, in pursuance of a power granted to him for that purpose by a preceding deed, called a "power of appointment;" also the deed or other instrument by which he so conveys. Where the power embraces several permitted objects, and the appointment is made to one or more of them, excluding others, it is called "exclusive."

Appointment may signify an appropriation of money to a specific purpose. Harris v. Clark, 3 N.Y. 93, 119, 51 Am.Dec. 352. See Illusory Appointment. It may also mean the arranging of a meeting. Spears v. State, 89 Tex.Cr.R. 459, 232 S.W. 326, 328.

Office or Public Function

The selection or designation of a person, by the person or persons having authority therefor, to fill an office or public function and discharge the duties of the same. State v. Braman, 173 Wis. 596, 181 N.W. 729, 730.

The term "appointment" is to be distinguished from "election." The former is an executive act. Election means that the person is chosen by a principle of selection in the nature of a vote, participated in by the public generally or by the entire class of persons qualified to express their choice in this manner. Mono County v. Industrial Ace. Commission, 175 Cal. 752, 167 P. 377, 378.

"Election" to office usually refers to vote of people, whereas "appointment" relates to designation by some individual or group. Board of Education of Boyle County v. McChesney, 235 Ky. 692, 32 S.W.2d 26, 27.

APPOINTOR. The person who appoints, or executes a power of appointment; as *appointee* is the person to whom or in whose favor an appointment is made. 1 Steph.Comm. 506, 507; 4 Kent, Comm. 316.

One authorized by the donor, under the statute of uses, to execute a power. 2 Bouv.Inst. n. 1923.

The appointor is the instrument of the donor of the power, and the appointee takes under the original will or instrument which creates the trust, and not from the donee of the power. Barret v. Berea College, 48 R.I. 258, 137 A. 145, 147.

APPORT. L. Fr. In old English law. Tax; tallage; tribute; imposition; payment; charge; expenses. Kelham.

APPORTION. To divide and distribute proportionally. School Dist. No. 3, Platte County, v. School Dist. No. 2, Platte County, 29 Wyo. 80, 210 P. 562.

APPORTIONMENT. The division, partition, or distribution of a subject-matter in proportionate parts. Hunt v. Callaghan, 32 Ariz. 235, 257 P. 648, 649. The division of rights or liabilities among several persons entitled or liable to them in accordance with their respective interests. Valley Nat. Bank of Phoenix v. Apache County, 57 Ariz. 459, 114 P.2d 883, 886.

Contracts

The allowance, in case of a severable contract, partially performed, of a part of the entire consideration proportioned to the degree in which the contract was carried out.

Corporate Shares

The pro *tanto* division among the subscribers of the shares allowed to be issued by the charter, where more than the limited number have been subscribed for. Haight v. Day, 1 Johns.Ch., N.Y., 18.

Incumbrances

Where several persons are interested in an estate, apportionment, as between them, is the determination of the respective amounts which they shall contribute towards the removal of the incumbrance.

Rent

The allotment of their shares in a rent to each of several parties owning it. The determination of the amount of rent to be paid when the tenancy is terminated at some period other than one of the regular intervals for the payment of rent. Gluck v. Baltimore, 81 Md. 315, 32 A. 515, 48 Am. St.Rep. 515.

Representatives

The determination upon each decennial census of the number of representatives in congress which each state shall elect, the calculation being based upon the population. See Const.U.S. art. 1, § 2; Amend. 14, § 2.

Right of Common

A division of the right of common between several persons, among whom the land to which, as an entirety, it first belonged has been divided.

Taxes

The apportionment of a tax consists in a selection of the subjects to be taxed, and in laying down the rule by which to measure the contribution which each of these subjects shall make to the tax. Barfield v. Gleason, 111 Ky. 491, 63 S.W. 964.

APPORTS EN NATURE. In French law. That which a partner brings into the partnership other than cash; for instance, securities, realty or personalty, cattle, stock, or even his personal ability and knowledge. Argl.Fr.Merc.Law, 545.

APPORTUM. In old English law. The revenue, profit, or emolument which a thing brings to the owner. Commonly applied to a corody or pension. Blount.

APPOSAL OF SHERIFFS. The charging them with money received upon their account in the exchequer. St. 22 & 23 Car. IL; Cowell.

APPOSER. An officer in the exchequer, clothed with the duty of examining the sheriffs in respect of their accounts. Usually called the "foreign apposer." Termes de la Ley. The office is now abolished.

APPOSTILLE, or APOSTILLE. In French law, an addition or annotation made in the margin of a writing. Merl. Repert.

APPRAISAL. A valuation or an estimation of value of property by two disinterested persons of suitable qualifications. Jacobs v. Schmidt, 231 Mich. 200, 203 N.W. 845, 846.

APPRAISE. In practice. To fix or set a price or value upon; to fix and state the true value of *a* thing, and, usually, in writing. Vincent v. German Ins. Co., 120 Iowa, 272, 94 N.W. 458. To value property at what it is worth. Tax Commission of Ohio v. Clark, 20 Ohio App. 166, 151 N.E. 780, 781.

To "appraise" money means to count. In re Hollinger's Estate, 259 Pa. 72, 102 A. 409.

APPRAISEMENT. A just and true valuation of property. A valuation set upon property under judicial or legislative authority. Cocheco Mfg. Co. v. Strafford, 51 N.H. 482. A valuation or estimation of the value of property. Littlehead v. Sheppard, 123 Okl. 29, 251 P. 60, 62.

An "arbitration" presupposes a controversy or difference to be decided, and the arbitrators proceed in a judicial way. On the other hand, an appraisal or valuation is generally a mere auxiliary feature of a contract of sale, the purpose of which is not to adjudicate a controversy but to avoid one. Thompson v. Newman, 36 Cal.App. 248, 171 P. 982, 983.

APPRAISER. A person appointed by competent authority to make an appraisement, to ascertain and state the true value of goods or real *estate.*

The title of "appraiser" carries with it a significance that he is to be the judge of the evidence he desires submitted to him on the question of valuation, in cases fairly treated by him. In re Gibert's Estate, 160 N.Y.S. 213, 214, 96 Misc. 401.

General Appraisers

Appraisers appointed under an act of congress to afford aid and assistance to the collectors of customs in the appraisement of imported merchandise. Gibb v. Washington, 10 Fed.Cas. 288.

Merchant Appraisers

Where the appraisement of an invoice of imported goods made by the revenue officers at the custom house is not satisfactory to the importer, persons may be selected (under this name) to make a definitive valuation; they must be mer-

chants engaged in trade. Oelberman v. Merritt, C.C.N.Y., 19 Fed. 408; s. c., 8 Sup.Ct. 151, 123 U.S. 356, 31 L.Ed. 164.

APPRECIABLE. Capable of being estimated, weighed, judged of, or recognized by the mind; capable of being perceived or recognized by the senses; perceptible but not a synonym of substantial. Fisher v. Los Angeles Pacific Co., 21 Cal. App. 677, 132 P. 767, 769; Stodder v. Rosen Talking Mach. Co., 247 Mass. 60, 141 N:E. 569, 571.

As used in a decree enjoining operation of a cotton oil mill in such manner as to throw out lint in "appreciable" quantities, "appreciable" may be practically synonymous with unreasonable. Buckeye Cotton Oil Co. v. Ragland, C. C.A.Miss., 11 F.2d 231, 234.

APPRECIATE. To estimate justly; to set a price or value on. Holmes v. Connell's Estate, 207 Mich. 663, 175 N.W. 148, 149; Brace v. Black, 125 Ill. 33, 17 N.E. 66. When used with reference to the nature and .effect of an act, "appreciate" may be synonymous with "know" or "understand." Western Indemnity Co. v. MacKechnie, Tex.Civ.App., 214 S.W. 456, 460.

APPRECIATION IN VALUE. Appreciation in the value of property has reference to the so-called unearned increment, and does not include that added value of the property made by extensions and permanent improvements. People ex rel. Adirondack Power & Light Corporation v. Public Service Commission, 193 N.Y.S. 186, 189, 200 App.Div. 268.

APPREHEND. To take hold of, whether with the mind, and so to conceive, believe, fear, dread, Trogdon v. State, 133 Ind. 1, 32 N.E. 725; or actually and bodily, and so to take a person on a criminal process; to seize; to arrest, Hogan v. Stophlet, 179 Ill. 150, 53 N.E. 604, 44 L.R.A. 809. To understand. Golden v. State, 25 Ga. 527, 531. To be conscious or sensible of. Collins v. Liddle, 67 Utah, 242, 247 P. 476, 479.

APPREHENSIO. Lat. In the civil and old English law. A taking hold of a person or thing; apprehension; the seizure or capture of a person. Calvin.

One of the varieties or subordinate forms of *occupatio,* or the mode of acquiring title to things not belonging to any one.

APPREHENSION.

In Practice

The seizure, taking, or arrest of a person on a criminal charge. The term "apprehension" is applied exclusively to criminal cases, and "arrest" to both criminal and civil cases. People v. Martin, 188 Cal. 281, 205 P. 121, 123, 21 A.L.R. 1399.

Civil Law

A physical or corporal act, *(corpus,)* on the part of one who intends to acquire possession of a thing, by which he brings himself into such a relation to the thing that he may subject it to his exclusive control; or by which he obtains the physical ability to exercise his power over the thing whenever he pleases. One of the requisites to the acquisition of judicial possession, and by which, when accompanied by intention, *(animus,)* possession is acquired. Mackeld.Rom.Law, §§ 248, 249, 250.

APPRENDRE. A fee or profit taken or received. Cowell.

APPRENTICE. A person, usually a minor, bound in due form of law to a master, to learn from him his art, trade,' or business, and to serve him during the time of his apprenticeship. 1 Bl.Comm. 426. City of St. Louis v. Bender, 248 Mo. 113, 154 S.W. 88, 89, 44 L.R.A.,N.S., 1072.

APPRENTICE EN LA LEY. An ancient name for students at law, and afterwards applied to counsellors, *apprentici ad barras,* from which comes the more modern word "barrister." In some of the ancient law-writers the terms apprentice and barrister are synonymous. Co. 2d Inst. 214; Eunomus, Dial. 2, § 53, p. 155.

APPRENTICESHIP. A contract by which one person, usually a minor, called the "apprentice," is bound to another person, called the "master," to serve him during a prescribed term of years in his art, trade, or business, in consideration of being instructed by the master in such art or trade, and (commonly) of receiving his support and maintenance from the master during such term.

The term during which an apprentice is to serve.

The *status* of an apprentice; the relation subsisting between an apprentice and his master.

APPRENTICIUS AD LEGEM. An apprentice to the law; a law student; a counsellor below the degree of serjeant; a barrister. See Apprentice en la Ley.

APPRIZING. In Scotch law. A form of process by which a creditor formerly took possession of the estates of the debtor in payment of the debt due. It is now superseded by adjudications.

APPROACH. To come nearer in space. Lawrence v. Goodwill, 44 Cal.App. 440; Weber v. Greenebaum, 270 Pa. 382, 113 A. 413, 414.

Thus, an "approaching" street car is one coming near to, in point of time and place. Ruffin Coal & Transfer Co. v. Rich, 214 Ala. 622, 108 So. 600, 602.

APPROACH, RIGHT OF. In international law. The right of a ship of war, upon the high sea, to draw near to another vessel for the purpose of ascertaining the nationality of the latter. The Marianna Flora, 11 Wheat., U.S., 43, 44, 6 L.Ed. 405. Kent understood it to be equivalent to the right of visit. 1 Kent, Comm. 153. And at present the right of approach has no existence apart from the right of visit.

APPROACHES. A way, passage, or avenue by which a place or building can be approached; an access. State ex rel. Washington Toll Bridge Au-

thority v. Yelle, 197 Wash. 110, 84 P.2d 688, 691; State v. Zangerle, 43 Ohio App. 30, 182 N.E. 644, 646.

Comprising the necessary traffic arteries and adjustment of a bridge to develop its maximum traffic capacity. State ex rel. Washington Toll Bridge Authority v. Yelle, 197 Wash. 110, 84 P.2d 688, 691, 692, 694; including embankments, grades, or structures of any sort serving as a passage or way. Starrett v. Inhabitants of Town of Thomaston, 126 Me. 205, 137 A. 67, 70. That part of the roadway which is essential to make the bridge accessible and convenient for public use. With respect to bridge or viaduct; In re Rosedale Ave. in City of New York, 162 N.Y.S. 877, 885, 175 App.Div. 864.

APPROBATE AND REPROBATE. In Scotch law. To approve and reject; to attempt to take advantage of one part, and reject the rest. Bell.

Equity suffers no person to *approbate and reprobate* the same deed. 1 Kames, Eq. 317; 1 Bell, Comm. 146. The doctrine of approbate and *reprobate* is the English doctrine of election.

APPROPRIATE. To make a thing one's own; to make a thing the subject of property; to exercise dominion over an object to the extent, and for the purpose, of making it subserve one's own proper use or pleasure. People v. Ashworth, 222 N.Y.S. 24, 27, 220 App.Div. 498. To prescribe a particular use for particular moneys; to designate or destine a fund or property for a distinct use, or for the payment of a particular demand. McKenzie Const. Co. v. City of San Antonio, Tex., 50 S.W.2d 349, 352; Jennings v. Kinsey, 308 Mo. 265, 271 S.W. 786, 787. Also used in the sense of distribute.

In this sense it may denote the act of an executor or administrator who distributes the estate of his decedent among the legatees, heirs, or others entitled, in pursuance of his duties and according to their respective rights; to take away from one to whom a chattel belongs, and to devote it to the exclusive use and benefit of him who appropriates it. Davis v. Perkins, 178 Ga. 195, 172 S.E. 562, 565; or properly used in this sense to denote the acquisition of property and a right of exclusive enjoyment in those things which before were without an owner or were *publics juris*. People v. Lammerts, 164 N.Y. 137, 58 N.E. 22.

APPROPRIATE PROCESS. A subpoena, subpoena duces tecum, or order to appear and produce books and records and testify within Internal Revenue Code providing that the Commissioner of Internal Revenue may ask the District Court by appropriate process to compel attendance, testimony or production of books, papers or other data. In re Wolrich, D.C.N.Y., 84 F.Supp. 481, 482.

APPROPRIATION. The act of appropriating or setting apart; prescribing the destination of a thing; designating the use or application of a fund. State v. Erickson, 93 Mont. 466, 19 P.2d 227, 229; McKenzie Const. Co. v. City of San Antonio, Tex.Civ.App., 50 S.W.2d 349, 352.

Public Law

The act by which the legislative department of government designates a particular fund, or sets apart a specified portion of the public revenue or of the money in the public treasury, to be applied to some general object of governmental expenditure, or to some individual purchase or expense. Blaine County Inv. Co. v. Gallet, 35 Idaho, 102, 204 P. 1066, 1067. Authority given by Legislature to proper officers to apply distinctly specified sum from designated fund out of treasury in given year for specified object or demand against state. State ex rel. Murray v. Carter, 167 Okl. 473, 30 P.2d 700, 702.

An element of the definition of "appropriation" is that the money appropriated be out of the general revenues of the state. Black and White Taxicab Co. v. Standard Oil Co., 25 Ariz. 381, 218 P. 139, 144. An "expenditure" is the expending, a laying out of money, disbursement, and is not the same as an "appropriation," the setting apart or assignment to a particular person or use. Grout v. Gates, 97 Vt. 434, 124 A. 76, 80; Suppiger v. Eniking, 60 Idaho 292, 91 P.2d 362, 364, 365.

A specific appropriation is an act of the legislature by which a named sum of money has been set apart in the treasury, and devoted to the payment of a particular demand. Stratton v. Green, 45 Cal. 149.

Appropriation of land. The act of selecting, devoting, or setting apart land for a particular use or purpose, as where land is appropriated for public buildings, military reservations, or other public uses. McSorley v. Hill, 2 Wash.St. 638, 27 Pac. 552; Jackson v. Wilcox, 2 Ill. 360. Taking of private property for public use in the exercise of the power of eminent domain. N. Ward Co. v. Board of Street Com'rs of City of Boston, 217 Mass. 381, 104 N.E. 965, 966. In this sense it may refer merely to physical occupation and contemplate payment prior thereto, in contra-distinction to "taking," referring to a legal taking and presupposing payment after damages are due. Keller v. City of Bridgeport, 101 Conn, 669, 127 A. 508, 511.

Appropriation of payments. The application of a payment to the discharge of a particular debt.

Thus, if a creditor has two distinct debts due to him from his debtor, and the latter makes a general payment on account, without specifying at the time to which debt he intends the payment to apply, it is optional for the creditor to *appropriate* (apply) the payment to either of the two debts he pleases. Gwin v. McLean, 62 Miss. 121; Martin v. Draher, 5 Watts (Pa.) 544.

Appropriation of water. An appropriation of water flowing on the public domain consists in the capture, impounding, or diversion of it from its natural course or channel and its actual application to some beneficial use private or personal to the appropriator, to the entire exclusion (or exclusion to the extent of the water appropriated) of all other persons. To constitute a valid appropriation, there must be an intent to apply the water to some beneficial use existing at the time or contemplated in the future, a diversion from the natural channel by means of a ditch or canal, or some other open physical act of taking possession of the water, and an actual application of it within a reasonable time to some useful or beneficial purpose. In re Water Rights in Silvies River, 115 Or. 27, 237 P. 322, 336; In re Manse Spring and Its Tributaries, Nye County, 60 Nev. 280, 108 P.2d 311, 314; State of Neb. v. State of Wyo., U.S.Neb. & Wyo., 65 S.Ct. 1332, 1349, 325 U. S. 589, 89 L.Ed. 1815.

It follows water to its original source whether through surface or subterranean streams or through percolation,

Justesen v. Olsen, 40 P.2d 802, 809, 86 Utah 158; and entitles appropriator to continuing right to use water to extent of appropriation, but not beyond that reasonably required and actually used. State of Arizona v. State of California, Ariz. & Cal., 56 S.Ct. 848, 852, 298 U.S. 558, 80 L.Ed. 1331.

English Ecclesiastical Law

The perpetual annexing of a benefice to some spiritual corporation either sole or aggregate, being the patron of the living. 1 Bl.Comm. 384; 3 Steph.Comm. 70-75; 1 Crabb, Real Prop. p. 144, § 129.

Where the annexation is to the use of a lay person, It is usually called an "impropriation" (q. v.). 1 Crabb, Real Prop. p. 145, § 130. There have been no appropriations since the dissolution of monasteries.

APPROPRIATION BILL. A measure before a legislative body authorizing the expenditure of public moneys and stipulating the amount, manner, and purpose of the various items of expenditure. State ex rel. Finnegan v. Dammann, 220 Wis. 143, 264 N.W. 622, 624.

APPROPRIATOR. One who makes an appropriation; as, an appropriator of water. Lux v. Haggin, 69 Cal. 255, 10 Pac. 736.

English Ecclesiastical Law

A spiritual corporation entitled to the profits of a benefice.

APPROVAL. The act of confirming, ratifying, sanctioning, or consenting to some act or thing done by another. Rooney v. South Sioux City, 111 Neb. 1, 195 N.W. 474, 475. "Approval" implies knowledge and exercise of discretion after knowledge. State v. Duckett, 133 S.C. 85, 130 S.E. 340, 342; McCarten v. Sanderson, 111 Mont. 407, 109 P.2d 1108, 1112, 132 A.L.R. 1229.

The act of a judge or magistrate in sanctioning and accepting as satisfactory a bond, security, or other instrument which is required by law to pass his inspection and receive his approbation before it becomes operative.

APPROVE. To be satisfied with; to confirm, ratify, sanction, or consent to some act or thing done by another; to sanction officially; to ratify; to confirm; to pronounce good; think or judge well of; admit the propriety or excellence of; be pleased with. Western Hospital Ass'n v. Industrial Accident Board, 51 Idaho 334, 6 P.2d 845, 848; MacNeill v. Maddox, 194 Ga. 802, 22 S.E.2d 653, 654; Board of Education of City of Hutchinson v. Reno Community High School, 124 Kan. 175; 257 P. 957, 959; Tibbens v. Clayton, D.C. Okl., 288 F. 393, 394. Distinguishable from "authorize," meaning to permit a thing to be done in future. Gray v. Gill, 210 N.Y.S. 658, 660, 125 Misc. 70.

To take to one's proper and separate use. To improve; to enhance the value or profits of anything. To inclose and cultivate common or waste land.

To *approve common* or waste land *is* to inclose and convert it to the purposes of husbandry, which the owner might always do, provided he left common sufficient for such as were entitled to it. 3 Kent, Comm. 406.

Old Criminal Law

To accuse or prove; to accuse an accomplice by giving evidence against him.

APPROVED INDORSED NOTES. Notes indorsed by another person than the maker, for additional security, the indorser being satisfactory to the payee. Mills v. Hunt, 20 Wend., N.Y., 431.

APPROVEMENT. At ancient common law a practice of criminal prosecutions by which a person accused of treason or felony was permitted to exonerate himself by accusing others and escaping prosecution himself. Lee v. State, 115 Fla. 30, 155 So. 123; Guthrie v. Commonwealth, 171 Va. 461, 198 S.E. 481, 482, 119 A.L.R. 683.

The custom existed only in capital cases, and consisted in the accused, called "approver", being arraigned and permitted to confess before plea and appeal or accuse another as his accomplice of the same crime in order to obtain his pardon.

APPROVER. L. Fr. To approve or prove; to vouch. Kelham.

APPROVER. An accomplice in crime who accuses others of the same offense, and is admitted as a witness at the discretion of the court to give evidence against his companions in guilt. He is vulgarly called "King's Evidence."

One who confesses himself guilty of felony and accuses others of the same crime to save himself from punishment. Myers v. People, 26 Ill. 175. By the old law, if he failed to convict those he accused he was at once hung. Lee v. State, 115 Fla. 30, 155 So. 123. See, also, Antithetarius.

In old English law. Certain men sent into the several counties to increase the farms (rents) of hundreds and wapentakes, which formerly were let at a certain value to the sheriff. Cowell.

Bailiffs of lords in their franchises. Sheriffs were called the king's "approvers" in 1 Edw. III, st. 1, c. 1. Termes de la Ley, 49.

Approvers in the Marches were those who had license to sell and purchase beasts there.

APPROXIMATE. Used in the sense of an estimate merely, meaning more or less, but about and near the amount, quantity, or distance specified. Stockburger v. Brooker, 33 Ga.App. 676, 127 S.E. 663. Near to; about; a little more or less; close. Texas Employers' Ins. Ass'n v. Fitzgerald, Tex. Civ.App., 292 S.W. 925, 927. Fiesel v. Bennett, 225 Iowa 98, 280 N.W. 482, 484. "Approximately" is very nearly synonymous with "proximately," P. B. Arnold Co. v. Buchanan, 60 Ind.App. 626, 111 N.E. 204, 207; meaning very nearly, but not absolutely. Sandberg v. Margold Realty Corporation, 247 N.Y.S. 139, 141, 231 App.Div. 241.

APPROXIMATION. Equitable doctrine by which precise terms of charitable trust can be varied under certain circumstances. Heustess v. Huntingdon College, 242 Ala. 272, 5 So.2d 777, 779, 780; applicable solely to charitable trusts and employed only where on failure of trust the court finds a general charitable intent. Waterbury Trust Co. v. Porter, 131 Conn. 206, 38 A.2d 598, 603.

APPRUARE. To take to one's use or profit. Cowell.

APPULSUS. In the civil law. A driving to, as of cattle to water. Dig. 8, 3, 1, 1.

APPURTENANCE. That which belongs to something else; an adjunct; an appendage; something annexed to another thing more worthy as principal, and which passes as incident to it, as a right of way or other easement to land; an outhouse, barn, garden, or orchard, to a house or messuage. Cohen v. Whitcomb, 142 Minn. 20, 170 N.W. 851, 852; Alwes v. Richheimer, 185 Ark. 535, 47 S.W.2d 1084, 1085; Joplin Waterworks Co. v. Jasper County, 327 Mo. 964, 38 S.W.2d 1068, 1076. An article adapted to the use of the property to which it is connected, and which was intended to be a permanent accession to the freehold. Szilagy v. Taylor, 63 Ohio App. 105, 25 N.E.2d 360, 361.

An article may become an "appurtenance to realty" without physical attachment. Metropolitan Life Ins. Co. v. Jensen, 69 S.D. 225, 9 N.W.2d 140, 141.

APPURTENANT. Belonging to; accessory or incident to; adjunct, appended, or annexed to; answering to *accessorium* in the civil law. 2 Steph. Comm. 30 note. McClintic-Marshall Co. v. Ford. Motor Co., 254 Mich. 305, 236 N.W. 792, 795; Being employed in leases for the purpose of including any easements or servitudes used or enjoyed with the demised premises. Riddle v. Littlefield, 53 N.H. 508, 16 Am.Rep. 388.

A thing is "appurtenant" to something else only when it stands in relation of an incident to a principal, and is necessarily connected with the use and enjoyment of the latter. Catterall v. Pulis, 137 Okl. 86, 278 P. 292, 294.

A thing is deemed to be incidental or *appurtenant* to land when it is by right used with the land for its benefit, as in the case of a way, or water-course, or of a passage for light, air, or heat from or across the land of another. Mattix v. Swepston, 127 Tenn. 693, 155 S.W. 928, 930.

Land cannot be appurtenant to land. Hurley v. Liberty Lake Co., 112 Wash. 207, 192 P. 4, 5; except in case of land under water. In re Eastern Boulevard in Borough of the Bronx, City of New York, 243 N.Y.S. 57, 61, 230 App. Div. 52.

APRAXIA. See Aphasia.

APROVECHAMEENTO. In Spanish law. Approvement, or improvement and enjoyment of public lands. As applied to pueblo lands, it has particular reference to the commons, and includes not only the actual enjoyment of them but a right to such enjoyment. Hart v. Burnett, 15 Cal. 530, 566.

APT. Fit; suitable; appropriate.

APT TDIE. Apt time sometimes depends upon *lapse* of time; as, where a thing is required to be done at the first term, or within a given time, it cannot be done afterwards. But the phrase more usually refers to the *order* of proceedings, as fit or suitable. Holmes Electric Co. v. Carolina Power & Light Co., 150 S.E. 621, 623, 197 N.C. 766.

APT WORDS. Words proper to produce the legal effect for which they are intended; sound technical phrases.

APTA VIRO. Fit for a husband; marriageable; a woman who has reached marriageable years.

APUD ACTA. Among the acts; among the recorded proceedings. In the civil law, this phrase is applied to appeals taken orally, in the presence of the judge, at the time of judgment or sentence. Credit Co., Ltd., v. Arkansas Cent. Ry. Co., 9 S. Ct. 107, 108, 128 U.S. 258, 32 L.Ed. 448.

AQUA. In the civil and old English law. Water; sometimes a stream or water-course.

AQUA zTESTIVA. In Roman law. Summer water; water that was used in summer only. Dig. 43, 20, 1, 3, 4.

AQUA CEDIT SOLO. Water follows the land. A sale of land will pass the water which covers it. 2 Bl.Comm. 18; Co.Litt. 4.

AQUA CURRENS. Running water.

AQUA CURRIT ET DEBET CURRERE, UT CURRERE SOLEBAT. Water runs, and ought to run, as it has used to run. A running stream should be left to flow in its natural channel, without alteration or diversion, Goble v. Louisville & N. R. Co., 187 Ga. 243, 200 S.E. 259, 261; that water is the common and equal property of every one through whose domain it flows. Elmore v. Ingalls, 17 So.2d 674, 245 Ala. 481.

AQUA DULCIS, or FRISCA. Fresh water. Reg. Orig. 97; Bract. fols. 117, 135.

AQUA FONTANEA. Spring water. Fleta, lib. 4, c. 27, § 8.

AQUA PROFLUENS. Flowing or running water. Dig. 1, 8, 2.

AQUA QUOTIDIANA. In Roman law. Daily water; water that might be drawn at all times of the year, *(qua quis quotidie possit uti, si vellet).* Dig. 43, 20, 1-4.

AQUA SALSA. Salt water.

AQUAZE DUCTUS. In the civil law. A servitude which consists in the right to carry water by means of pipes or conduits over or through the estate of another. Dig. 8, 3, 1; Inst. 2, 3.

AQULE HAUSTUS. In the civil law. A servitude which consists in the right to draw water from the fountain, pool, or spring of another. Inst. 2, 3, 2; Dig. 8, 3, 1, 1.

AQU)E IMMITTEND1E. A civil law easement or servitude, consisting in the right of one whose house is surrounded with other buildings to cast waste water upon the adjacent roofs or yards. Similar to the common law easement of drip. Bellows v. Sackett, 15 Barb. (N.Y.) 96.

AQUAGIUM. A canal, ditch, or water course running through marshy grounds. A mark or gauge placed in or on the banks of a running stream, to indicate the height of the water, was called "aqua-*g au g ium."* Spelman.

AQUATIC RIGHTS. Rights which individuals have to the use of the sea and rivers, for the purpose of fishing and navigation, and also to the soil in the sea and rivers.

AQUILIAN LAW. See Lex Aquilia,

ARABANT. They plowed. A term of feudal law, applied to those who held by the tenure of plowing and tilling the lord's lands within the manor. Cowell.

ARABLE LAND. That which is fit for plowing or tillage, and thus is distinguishable from swamp land, which is land that is too wet for cultivation. 6 C.J.S. p. 143; McCarter v. Sooy Oyster Co., 75 A. 211, 215, 78 N.J.Law, 394.

ARAHO. In feudal law. To make oath in the church or some other holy place. All oaths were made in the church upon the relics of saints, according to the Ripuarian laws. Cowell; Spelman.

ARALIA. Plowlands. Land fit for the plow. Denoting the character of land, rather than its condition. Spelman.

ARATOR. A plowman; a farmer of arable land.

ARATRUM TERR)E. In old English law. A plow of land; a plowland; as much land as could be tilled with one plow (or by a single "arator" or plowman). Whishaw.

ARATURA TERRLE. The plowing of land by the tenant, or vassal, in the service of his lord. Whishaw.

ARATURIA. Land suitable for the plow; arable land. Spelman.

ARBITER. A person chosen to decide a controversy; an arbitrator, referee. A person bound to decide according to the rules of law and equity, as distinguished from an arbitrator, who may proceed wholly at his own discretion, so that it be according to the judgment of a sound man. Cowell.

In the Roman law. A judge invested with a discretionary power. A person appointed by the praetor to examine and decide that class of causes or actions termed *"bona fidei,"* and who had the power of judging according to the principles of equity, *(ex cequo et bono; )* distinguished from the *judex, ( q. v.,)* who was bound to decide according to strict law. Inst. 4, 6, 30, 31.

According to Mr. Abbott, the distinction is as follows: "Arbitrator" is a technical name of a person selected with reference to an established system for friendly determination of controversies, which, though not judicial, is yet regulated by law; so that the powers and duties of the arbitrator, when once he is chosen, are prescribed by law, and his doings may be judicially revised if he has exceeded his authority. "Arbiter" is an untechnical designation of a person to whom a controversy is referred, irrespective of any law to govern the decision ; and is the proper word to signify a referee of a question outside of or above municipal law. But it is elsewhere said that the distinction between arbiters and arbitrators is not observed in modern law. Russ.Arb. 112.

ARBITRAGE. Transactions of bankers and mercantile houses by which stocks or bills are bought in one market and sold in another for the sake of the profit arising from a difference in price in the two markets.

ARBITRAMENT. The award or decision of arbitrators upon a matter of dispute, which has been submitted to them. Termes de la Ley.

ARBITRAMENT AND AWARD. A plea to an action brought for the same cause which had been submitted to arbitration and on which an award had been made. Wats.Arb. 256.

ARBITRAMENTUM IEQUUM TRIBUIT CUIQUE SUUM. A just arbitration renders to every one his own. Noy, Max. 248.

ARBITRARILY. See Arbitrary.

A finding that certain orders were "arbitrarily" given by an engineer in charge of a public improvement did not amount to a finding that they were given in bad faith, fraudulently, or through ignorance or incompetency. First Savings & Trust Co. v. Milwaukee County, 158 Wis. 207, 148 N.W. 22, 33.

ARBITRARINESS. Conduct or acts based alone upon one's will, and not upon any course of reasoning and exercise of judgment. Garman v. Myers, 183 Okl. 141, 80 P.2d 624, 626.

ARBITRARY. Means in an "arbitrary" manner, as fixed or done capriciously or at pleasure; without adequate determining principle; not founded in the nature of things; nonrational; not done or acting according to reason or judgment; depending on the will alone; absolutely in power; capriciously; tyrannical; despotic; Cornell v. Swisher County, Tex.Civ.App., 78 S.W.2d 1072, 1074. Without fair, solid, and substantial cause; that is, without cause based upon the law. U. S. v. Lotempio, D.C.N.Y., 58 F.2d 358, 359; not governed by any fixed rules or standard. People ex rel. Hultman v. Gilchrist, 188 N.Y.S. 61, 65, 114 Misc. 651.

ARBITRARY GOVERNMENT. The difference between a free and an arbitrary government is that in the former limits are assigned to those to whom the administration is committed, but the latter depends on the will of the departments or some of them. Kamper v. Hawkins, 1 Va.Cas. 20, 23.

ARBITRARY POWER. Power to act according to one's own will; especially applicable to power conferred on an administrative officer, who is not furnished any adequate determining principle. Fox Film Corporation v. Trumbull, D.C.Conn., 7 F.2d 715, 727.

ARBITRARY PUNISHMENT. That punishment which is left to the decision of the judge, in distinction from those defined by statute.

ARBITRATION. The submission for determination of disputed matter to private unofficial persons selected in manner provided by law or agreement. Stockwell v. Equitable Fire & Marine Ins. Co., 25 P.2d 873, 134 Cal.App. 534. The substitution of their award or decision for judgment of a court. In re Curtis-Castle Arbitration, 64 Conn. 501, 30 A. 769, 42 Am.St.Rep. 200; Atlantic Fruit

Co. v. Red Cross Line, D.C.N.Y., 276 F. 319; Red Cross Line v. Atlantic Fruit Co., 44 S.Ct. 274, 264 U.S. 109, 68 L.Ed. 582.

*Compulsory arbitration* is that which occurs when the consent of one of the parties is enforced by statutory provisions. Wood v. City of Seattle, 23 Wash. 1, 62 Pac. 135, 52 L.R.A. 369.

*Voluntary arbitration* Is by mutual and free consent of the parties.

The *submission* is an agreement by which parties agree to submit their differences to the decision of a referee or arbitrators. It is sometimes termed a reference. 3 M. & W. 816; McManus v. McCulloch, 6 Watts (Pa.) 357; Stewart v. Cass, 16 Vt. 663, 42 Am. Dec. 534; Howard v. Sexton, 4 N.Y. 157. As to "final submission," see In re Gitt, 125 N.Y.S. 369, 140 App.Div. 382. In a wide sense, "arbitration" may embrace the whole method of thus settling controversies, and include all the various steps. But in a more strict use, the term denotes only the submission and hearing, the decision being separately spoken of, and called an "award." An award is the judgment or decision of arbitrators or referees on a matter submitted to them. It is also the writing containing such judgment. Cowell; *Termes de la Ley;* Jenk. 137. See Award.

As distinguished from appraisal, an arbitration presupposes a controversy or a difference to be tried and decided. On the other hand, an appraisal or valuation is generally a mere auxiliary feature, as of a contract of sale, the purpose of which is not to adjudicate a controversy but to avoid one. Toledo S. S. Co. v. Zenith Transp. Co., 184 F. 391, 106 C.C.A. 501.

ARBITRATION CLAUSE. A clause inserted in a contract providing for compulsory arbitration in case of dispute as to rights or liabilities under it; ineffectual if it purports to oust the courts of jurisdiction entirely. See Perry v. Cobb, 88 Me. 435, 34 A. 278, 49 L.R.A. 389.

ARBITRATION OF EXCHANGE. This takes place where a merchant pays his debts in one country by a bill of exchange upon another.

The business of buying and selling exchange (bills of exchange) between two or more countries or markets, and particularly where the profits of such business are to be derived from a calculation of the relative value of exchange in the two countries or markets, and by taking advantage of the fact that the rate of exchange may be higher in the one place than in the other at the same time.

ARBITRATOR. A private, disinterested person, chosen by the parties to a disputed question, for the purpose of hearing their contention, and giving judgment between them; to whose decision (award) the litigants submit themselves either voluntarily, or, in some cases, compulsorily, by order of a court. Fudickar v. Insurance Co., 62 N.Y. 399.

"Referee" is of frequent modern use as a synonym of arbitrator, but is in its origin of broader signification and less accurate than arbitrator.

ARBITRIOS. In Spanish and Mexican law. Taxes imposed by municipalities on certain articles of merchandise, to defray the general expenses of government, in default of revenues from "proprios" (q. v.), e., lands owned by the municipality, or the income of which was legally set apart for its support. Sometimes used in a wider sense, as meaning the resources of a town, including its privileges in the royal lands as well as the taxes. Escriche Dict.; Sheldon v. Milmo, 90 Tex. 1, 36 S.W. 413.

ARBITRIUM. The decision of an arbiter, or arbitrator; an award; a judgment.

ARBITRIUM EST JUDICIUM. An award is a judgment. Jenk.Cent. 137.

ARBITRIUM EST JUDICIUM BONI VIRI, SECUNDUM )EQUUM ET BONUM. An award is the judgment of a good man, according to justice. 3 Bulst. 64.

ARBOR. Lat. A tree; a plant; something larger than an herb; a general term including vines, osiers, and even reeds. The mast of a ship. Brissonius. Timber. Ainsworth; Calvinus, Lex.

In a technological sense, "arbor" denotes the core consisting of an iron pipe over which is spread a thin coating of damp sand and which is inserted in the mold used in casting iron pipe. Casey-Hedges Co. v. Gates, 139 Tenn. 63, 201 S.W. 760, 761, L.R.A.1918B, 184.

ARBOR CIVILIS. A genealogical tree. Coke, Inst.

ARBOR CONSANGUINITATIS. A table, formed in the shape of a tree, showing the genealogy of a family. See the arbor *civilis* of the civilians and canonists. Hale, Com.Law, 335.

ARBOR DUM CRESCIT, LIGNUM DUM CRESCERE NESCIT. [That which is] a tree while it grows, [is] wood when it ceases to grow. Cro. Jac. 166; Hob. *77b,* in marg.

ARBOR FINALIS. In old English law. A boundary tree; a tree used for making a boundary line. Bract. fols. 167, 207b.

ARCA. Lat. In the civil law. A chest or coffer; a place for keeping money. Dig. 30, 30, 6; Id. 32, 64. Brissonius.

ARCANA IMPERII. State secrets. 1 B1.Comm. 337.

ARCARIUS._ In civil and old English law. A treasurer; a keeper of public money% Cod. 10, 70, 15; Spelman.

ARCHAIONOMIA. A collection of Saxon laws, published during the reign of Queen Elizabeth, in the Saxon language, with a Latin version by Lambard.

ARCHBISHOP. In English ecclesiastical law. The chief of the clergy in his province, having supreme power under the king or queen in all ecclesiastical causes. He has also his own diocese, in which he exercises episcopal jurisdiction, as in his province he exercises archiepiscopal authority. In England he is addressed as *Most Reverend.*

ARCHDEACON. A dignitary of the Anglican church who has ecclesiastical jurisdiction immediately subordinate to that of the bishop, either throughout the whole of his diocese or in some particular part of it. He is a ministerial officer; 1 Bla.Com. 383. He is addressed as *Venerable.*

ARCHDEACON'S COURT. In English ecclesiastical law. A court held before a judge appointed by the archdeacon, and called his official. Its

jurisdiction comprises the granting of probates and administrations, and ecclesiastical causes in general, arising within the archdeaconry. It is the most inferior court in the whole ecclesiastical polity of England. 3 Bl.Comm. 64; 3 Steph.Comm. 430.

ARCHDEACONRY. A division of a diocese, and the circuit of an archdeacon's jurisdiction.

ARCHERY. In feudal law. A service of keeping a bow for the lord's use in the defense of his castle. Co.Litt. 157.

ARCHES COURT. In English ecclesiastical law. A court of appeal belonging to the Archbishop of Canterbury, the judge of which is called the "Dean of the Arches," because his court was anciently held in the church of Saint Mary-le-Bow, *(Sancta Maria de Arcubus,)* so named from the steeple, which is raised upon pillars built archwise. 3 Bl.Comm. 64.

The court was formerly held in the hall belonging to the College of Civilians, commonly called "Doctors' Commons." It is now held in Westminster Hall. Its proper jurisdiction is only over the thirteen peculiar parishes belonging to the archbishop in London, but, the office of Dean of the Arches having been for a long time united with that of the archbishop's principal official, the Judge of the Arches, in right of such added office, it receives and determines appeals from the sentences of all inferior ecclesiastical courts within the province.

ARCHETYPE. The original from which a copy is made.

ARCHICAPELLANUS. L. Lat. In old European law. A chief or high chancellor, *(summus cancellarius).* Spelman.

ARCHITECT. One who makes plans and specifications for a building and superintends its construction. Payne v. De Vaughn, 77 Cal.App. 399, 246 P. 1069, 1071; Stephens County v. J. N. McCammon, Inc., 122 Tex. 148, 52 S.W.2d 53; Sugarman Contracting Co. v. Phoenix Finance System, Iowa, 243 N.W. 369, 370. Also one who plans and constructs landscape work. State v. Mcllhenny, 201 La. 78, 9 So.2d 467, 470.

ARCHIVES. The Rolls; any place where ancient records, charters, and evidences are kept. In libraries, the private depository. Cowell; Spelman.

The derivative meaning of the word (now the more common) denotes the writings themselves thus preserved; thus we say the archives of a college, of a monastery, a public office, etc. Texas M. Ry. Co. v. Jarvis, 69 Tex. 537, 7 S.W. 210.

ARCHIVIST. The custodian of archives.

ARCIFINIOUS. (Lat., *arcifinius* or *arcifinalis;* Fr., *arcifinie.)* Pertaining to landed estates having natural boundaries, such as woods, mountains, or rivers. The owners of such estates, unlike the owners of "agri limitati" *(q. v.),* .have the right of alluvion. Smith v. St. Louis Public Schools, 30 Mo. 290, 303.

Also, having a frontier forming a natural defense. Twiss, Law of Nations, II. 215.

ARCTA ET SALVA CUSTODIA. Lat. In strict (or close) and safe custody or keeping. When a defendant is arrested on a *capias ad satisfaciendum, (ca. sa.,)* he is to be kept *arcta et salva custodi.* 3 Bl.Comm. 415.

ARDENT SPIRITS. Spirituous or distilled liquors. State v. Centennial Brewing Co., 55 Mont. 500, 179 P. 296, 297; Christian v. Commonwealth, 132 Va. 616, 111 S.E. 130.

Synonymous with "spirituous liquors" *(q. v.)* and, sometimes, with intoxicating liquors generally, though the term is properly applied only to liquors obtained by distillation, such as rum, whisky, brandy, and gin. 48 C.J.S. p. 139; Sarlls v. U. S., 14 S.Ct. 720, 721, 152 U.S. 570, 572, 38 L.Ed. 556.

ARDOUR. In old English law. An incendiary; a house burner.

ARE, *n.* A surface measure in the French law, in the form of a square, equal to 1076.441 square feet.

AREA. A surface, a territory, a region. Fleming v. Farmers Peanut Co., C.C.A.Ga., 128 F.2d 404, 406. Any plane surface, also the inclosed space on which a building stands, the sunken space or court giving ingress and affording light to the basement of a building, a particular extent of surface. State v. Armstrong, 97 Neb. 343, 149 N. W. 786, 788, Ann.Cas.1917A, 554. An inclosed yard or opening in a house; an open place adjoining a house. 1 Chit.Pr. 176. The site of a house; a site for building; the space where a house has stood. The ground on which a house is built, and which remains after the house is removed. Brissonius; Calvin.

In the civil law. A vacant space in *a* city; a place. not built upon. Dig. 50, 16, 211.

"Area" in geometry means the superficial contents of any figure. State v. City of Polytechnic, Tex.Civ.App., 194 S.W. 1136, 1140.

AREAL GEOLOGY. That branch of geology which pertains to the distribution, position, and form of the areas of the earth's surface, occupied by different sorts of rock or different geologic formations, and to the making of geologic maps. Lewis v. Carr, 49 Nev. 366, 246 P. 695, 696.

AREAWAY. As used in an ordinance regulating the construction of areaways under any sidewalk, "areaway" was equivalent to cellar or room under the sidewalk. State v. Armstrong, 97 Neb. 343, 149 N.W. 786, 788, Ann.Cas.1917A, 554.

ARENALES. In Spanish law. Sandy beaches; or grounds on the banks of rivers. White, Recop. b. 2, tit. 1, c. 6.

ARENDATOR. A farmer or renter; in some provinces of Russia, formerly one who farmed the public rents or revenues; a "crown arendator" is one who rents an estate belonging to the crown.

ARENIFODINA. In the civil law. A sandpit. Dig. 7, 1, 13, 5.

ARENTARE. Lat. To rent; to let out at a certain rent. Cowell. *Arentatio.* A renting.

AREOPAGITE. In ancient Greek law. A lawyer or chief judge of the Areopagus in capital matters in Athens; a tribunal so called after a hill or slight eminence, in a street of that city dedicated to Mars, where the court was held in which those judges were wont to sit. Wharton.

ARERE. L. Fr. Behind; in arrear; back; again. Adams Gloss.

ARETRO. In arrear; behind. Also written *a retro.*

ARG. An abbreviation of *arguendo.*

ARGENT. In heraldry. Silver.

ARGENTARIUS (pl., Argentarii). In the Roman law, a money lender or broker; a dealer in money; a banker. *Argentarium,* the instrument of the loan, similar to the modern word "bond" or "note."

ARGENTARIUS MILES. A money porter in the English exchequer, who carries the money from the lower to the upper exchequer to be examined and tested. Spelman.

ARGENTEUS. An old French coin, answering nearly to the English shilling. Spelman.

ARGENTUM. Silver; money.

ARGENTUM ALBUM. Bullion; uncoined silver; common silver coin; silver coin worn smooth. Cowell; Spelman.

ARGENTUM DEL God's money; God's penny; money given as earnest in making a bargain. Cowell.

ARGUENDO. In arguing; in the course of the argument. A statement or observation made by a judge as a matter of argument or illustration, but not directly bearing upon the case at bar, or only incidentally involved in it, is said (in the reports) to be made *arguendo,* or in the abbreviated form, *arg.*

ARGUMENT. An effort to establish belief by a course of reasoning.

In rhetoric and logic, an inference drawn from premises, the truth of which is indisputable, or at least highly probable.

The argument of a demurrer, special case, appeal, or other proceeding involving a question of law, consists of the speeches of the opposed counsel; namely, the "opening" of the counsel having the right to begin, *(q. v.,)* the speech of his opponent, and the "reply" of the first counsel. It answers to the trial of a question of fact. Sweet. But the submission of printed briefs may technically constitute an argument. State v. California Min. Co., 13 Nev. 209. Also, the opening statement to a jury is part of the argument. State *v.* McCaskill, 173 Iowa 563, 155 N.W. 976, 977.

ARGUMENTATIVE. By way of reasoning. In pleading. Indirect; inferential. Steph.P1. 179.

A pleading is so called in which the statement on which the pleader relies is implied instead of being expressed, or where it contains, in addition to proper statements of facts, reasoning or arguments upon those facts and their relation to the matter in dispute, such as should be reserved for presentation at the trial.

ARGUMENTATIVE INSTRUCTION. An instruction which singles out or unduly emphasizes a particular issue, theory, or defense, or one which tends to invade the province of the jury with regard to the weight, probative effect, or sufficiency of the evidence or the inferences to be drawn therefrom. See 64 C.J. §§ 594, 601.

ARGUMENTUM A COMMUNITER ACCIDENTIBUS IN JURE FREQUENS EST. An argument drawn from things commonly happening is frequent in law. Broom Max. 44.

ARGUMENTUM A DIVISIONE EST FORTISSIMUM IN JURE. An argument from division [of the subject] is of the greatest force in law. Co. Litt. 213b; 6 Coke 60.

ARGUMENTUM A MAJORI AD MINUS NEGATIVE NON VALET; VALET E CONVERSO. An argument from the greater to the less is of no force negatively; affirmatively (or conversely) it is. Jenk.Cent. 281.

ARGUMENTUM A SIMILI VALET IN LEGE. An argument from a like case (from analogy) is good in law. Co.Litt. 191.

ARGUMENTUM AB AUCTORITATE EST FORTISSIMUM IN LEGE. An argument from authority is the strongest in the law. "The book cases are the best proof of what the law is." Co. Litt. 254a.

ARGUMENTUM AB IMPOSSIBILI VALET IN LEGE. An argument drawn from an impossibility is forcible in law. Co.Litt. 92a.

ARGUMENTUM AB INCONVENIENT!. An argument arising from the inconvenience which the proposed construction of the law would create.

Where the constitutionality of a statute is concerned, it is only when the question is close and doubtful that this doctrine will be applied and consideration taken of the consequences of declaring the statute unconstitutional. Calhoun County v. Early County, 205 Ga. 169, 52 S.E.2d 854; Smith v. City Council of Augusta, 203 Ga. 511, 47 S.E.2d 582, 587.

ARGUMENTUM AB INCONVENIENT! EST VALIDUM IN LEGE; QUIA LEX NON PERMITTIT ALIQUOD INCONVENIENS. An argument drawn from what is inconvenient is good in law, because the law will not permit any inconvenience. Co.Litt. 66a, 258.

ARGUMENTUM AB INCONVENIENT! PLURIMUM VALET [EST VALIDUM] IN LEGE. An argument drawn from inconvenience is of the greatest weight [is forcible] in law. Co.Litt. 66a,

97a, 152b, 258b; Broom, Max. 184. If there be in any deed or instrument equivocal expressions, and great inconvenience must necessarily follow from one construction, it is strong to show that such construction is not according to the true intention of the grantor; but where there is no equivocal expression in the instrument, and the words used admit only of one meaning, arguments of inconvenience prove only want of foresight in the grantor. 3 Madd. 540; 7 Taunt. 496.

ARIBANNUM. In feudal law. A fine for not setting out to join the army in obedience to the summons of the king.

ARIERBAN, or ARRIERE-BAN. An edict of the ancient kings of France and Germany, commanding all their vassals, the noblesse, and the vassals' vassals, to enter the army, or forfeit their estates on refusal. Spelman. See, also, Arrier Ban.

ARIMANNI. A medieval term for a class of agricultural owners of small allodial farms, which they cultivated in connection with larger farms belonging to their lords, paying rent and service for the latter, and being under the protection of their superiors. Military tenants holding lands from the emperor. Spelman.

ARISE. To spring up, originate, to come into being or notice, to become operative, sensible, visible, or audible; to present itself. Bergin v. Temple, 111 Mont. 539, 111 P.2d 286, 289, 290, 133 A.L.R. 1115; Lane v. Travelers Ins. Co. of Hartford, Conn., 230 Iowa 973, 299 N.W. 553, 555.

"Accrue" not synonymous; the latter term means to result, to add, to acquire, to receive, to benefit, Rogues v. Continental Casualty Co., 17 La.App. 465, 135 So. 51, 52.

A case "arises" under the Constitution or a law of the United States, so as to be within the jurisdiction of a federal court, whenever its correct decision depends on the construction of either. Cleveland, C., C. & St. L. Ry. Co. v. Hirsch, C.C.A.Ohio, 204 F. 849, 851; Blease v. Safety Transit Co., C.C.A.S.C., 50 F.2d 852, 854.

A cause of action or suit "arises", so as to start running of limitation, when party has a right to apply to proper tribunal for relief. Washington Security Co. v. State, 9 Wash.2d 197, 114 P.2d 965, 967, 135 A.L.R. 1330 ; and it arises at time when and place where act is unlawfully omitted or committed. State ex rel. Birnamwood Oil Co. v. Shaughnessy, 243 Wis. 306, 10 N.W.2d 292, 295.

ARISING OUT OF AND IN THE COURSE OF OWN EMPLOYMENT. Workmen's Compensation Acts provide for compensating an employee whose injury is one "arising out of and in the course of the employment." These words describe an injury directly and naturally resulting in a risk reasonably incident to the employment. Thomas v. Proctor & Gamble Mfg. Co., 104 Kan. 432, 179 P. 372, 374, 6 A.L.R. 445; Trudenich v. Marshall, D.C.Wash., 34 F.Supp. 486, 488. They mean that there must be some causal connection between the conditions under which the employee worked and the injury which he received. Amicucci v. Ford Motor Co., 308 Mich. 151, 13 N.W.2d 241.

The words "arising out of employment" refer to the origin of the cause of the injury, while "course of employment" refer to the time, place, and circumstances under which the injury occurred. Walker v. Hyde, 43 Idaho, 625, 253 P. 1104, 1105. See, further, Course; Watson v. Pitcairn, Mo.App., 139 S.W.2d 552, 554; Ervin v. Industrial Commission, 364 Ill. 56, 4 N.E.2d 22, 25.

ARISTOCRACY. A government in which a class of men rules supreme; a form of government which is lodged in a council composed of select members or nobles, without a monarch, and exclusive of the people.

A privileged class of the people; nobles and dignitaries; people of wealth and station.

ARISTO-DEMOCRACY. A form of government where the power is divided between the nobles (or the more powerful) and the people.

ARLES. Earnest. Used in Yorkshire in the phrase "Arles-penny." Cowell. In Scotland it has the same signification. Bell.

ARM OF THE SEA. A portion of the sea projecting inland, in which the tide ebbs and flows. 5 Coke, 107. It is. considered as extending as far into the interior of a country as the water of fresh rivers is propelled backwards by the ingress of the tide. Adams v. Pease, 2 Conn. 484; U. S. v. Grush, 5 Mason, 290, Fed.Cas.No.15,268; Ex parte Byers, D.C.Mich., 32 Fed. 404. See Fauces Terre.

ARMA. Lat. Arms; weapons, offensive and defensive; armor; arms or cognizances of families.

ARMA DARE. To dub or make a knight.

ARMA IN ARMATOS SUMERE JURA SINUNT. The laws permit the taking up of arms against armed persons. 2 Inst. 574.

ARMA MOLUTA. Sharp weapons that cut, in contradistinction to such as are blunt, which only break or bruise. Fleta, lib. 1, c. 33, par. 6.

ARMA REVERSATA. Reversed arms, a punishment for a traitor or felon. Cowell.

ARMATA VIS. In the civil law. Armed force. Dig. 43, 16, 3; Fleta, lib. 4, c. 4.

ARMED. Furnished or equipped with weapons of offense or defense. People ex rel. Griffin v. Hunt, 270 N.Y.S. 248, 254, 150 Misc. 163.

A vessel is "armed" when she is fitted with a full armament for fighting purposes. Murray v. The Charming Betsy, 2 Cranch, 121, 2 L. Ed. 208.

ARMED FORCE. As used in statutes authorizing peace officers to summon an "armed force" to aid them, this term may refer to a military organization, but this is not necessarily so, and, depending on the context, it may mean only a posse comitatus *(q. v.).* Chapin v. Ferry, 28 P. 754, 756, 3 Wash. 386, 15 L.R.A. 116.

ARMED NEUTRALITY. An attitude of neutrality between belligerents which the neutral state is prepared to maintain by armed force if necessary.

ARMED PEACE. A situation in which two or more nations, while actually at peace with each other, are armed for possible or probable hostilities.

ARMIGER. An armor-bearer; an esquire. A title of dignity belonging to gentlemen authorized to bear arms. Cowell. In its earlier meaning, a servant who carried the arms of a knight. A tenant by scutage; a servant or valet; applied, also, to the higher servants in convents. Spelman.

ARMING ONE'S SELF. Equipping one's self with a weapon or weapons. Simmons v. State, 87 Tex. Cr.R. 270, 220 S.W. 554.

ARMISCARA. An ancient mode of punishment, which was to carry a saddle at the back as a token of subjection. Spelman.

ARMISTICE. A suspending or cessation of hostilities between belligerent nations or forces for a considerable time. Dooley v. Johnson, 133 Cal. App. 459, 24 P.2d 540.

The term cannot properly be applied to agreements between a government on one side and rioters, brigands, and banditti on the other. O'Neill v. Central Leather Co., 87 N.J.L. 552, 94 A. 789, 790, L.R.A.1917A, 276.

An armistice differs from a mere "suspension of arms" *(q. v.)* in that the latter is concluded for very brief periods and for local military purposes onV, whereas an armistice not only covers a longer period, 'but is agreed upon for political purposes. It is said to be *general* if it relates to the whole area of the war, and *partial* if it relates to only a portion of that area. Partial armistices are sometimes called truces *(q.* v.) but there is no hard and fast distinction.

ARMORIAL BEARINGS. In English law. A device depicted on the (now imaginary) shield of one of the nobility, of which gentry is the lowest degree. The criterion of nobility is the bearing of arms, or armorial bearings, received from ancestry.

ARMORUM APPELLATIONE, NON SOLUM SCUTA ET GLADII ET GALEZE, SED ET FUSTES ET LAPIDES CONTINENTUR. Under the name of arms are included, not only shields and swords and helmets, but also clubs and stones. Co.Litt. 162.

ARMORY. A building where arms, ammunition, and instruments of war are stored. Comp.Laws 1929, §§ 692, 3395. Grosse Ile v. Saunders, 262 Mich. 451, 247 N.W. 912, 913.

ARMS. Anything that a man wears for his defense, or takes in his hands, or uses in his anger, to cast at or strike at another. Co.Litt. 161b, 162a; State v. Buzzard, 4 Ark. 18.

Arms, or coat of arms, signifies *insignia, i. e.* ensigns of honor, such as were formerly assumed by soldiers of fortune, and painted on their shields to distinguish them; or nearly the same as armorial bearings *(q. v.).*

ARMS, LAW OF. That law which gives precepts and rules concerning war; how to make and observe leagues and truce, to punish offenders in the camp, and such like. Cowell; Blount. Now more commonly called the "law of war." See, also, War.

ARMY. The armed forces of a nation intended for military service on land.

An "army" is a body of men whose business is war, while the "militia" is a body of men composed of citizens occupied temporarily in the pursuit of civil life, but organized by discipline and drill, and called into the field for temporary military service when the exigencies of the country require it. And see Brown v. Soldiers' Bonus Board, 44 R.I. 483, 116 A. 280, 281.

—Regular army. The permanent military establishment, which is maintained both in peace and war according to law. 10 U.S.C.A. § 3; State v. Moorhead, 102 Neb. 276, 167 N.W. 70, 71.

AROMATARIUS. A word formerly used for a grocer. 1 Vent. 142.

AROUND. In the vicinity of. Hawkins v. First National Bank, Tex.Civ.App., 175 S.W. 163, 164.

Thus, sheep branded "0" on the hip or side may be within a mortgage covering sheep described as branded "0" around the hip bone.

ARPEN, Arpent, Arpennus. A measure of land of uncertain quantity mentioned in Domesday and other old books; by some called an "acre," by others "half an acre," and by others a "furlong." Spelman; Cowell; Blount. Quoted in McMillan v. Aiken, 205 Ala. 35, 88 So. 135, 143.

A French measure of land, containing one hundred square perches, of eighteen feet each, or about an acre. But the quantity varied in different provinces. Spelman. An "arpent" is a land measure varying in dimension from .84 of an acre to 1404 acres and to 1.28 acres, accordingly as the arpent meant is an arpent de Paris, an arpent cornmun, or an arpent d'ordonnance. Troll v. City of St. Louis, 257 Mo. 626, 168 S.W. 167, 171. In Louisiana, the terms "arpent" and "acre" are sometimes used interchangeably; but there is a considerable difference, the arpent being the square of 192 feet and the acre of 209 and a fraction. Randolph v. Sentilles, 110 La. 419, 34 So. 587.

ARPENTATOR. A measurer or surveyor of land. Cowell; Spelman.

ARRA. In the civil law. Earnest; earnest-money; evidence of a completed bargain. Used of a contract of marriage, as well as any other. Spelled, also, *Arrha, Arrhce, Arrce,* Calvin. Cf. Arles.

ARRAIGN. In criminal practice. To bring a prisoner to the bar of the court to answer the matter charged upon him in the indictment. Ex parte Jeffcoat, 109 Fla. 207, 146 So. 827, 828. The arraignment *(q.* v.) of a prisoner consists of calling upon him by name, and reading to him the indictment, (in the English tongue,) and demanding of him whether he be guilty or not guilty, and entering his plea. State v. Voelpel, 213 Iowa 702, 239 N.W. 677, 679.

In old English law. To order, or set in order; to conduct in an orderly manner; to prepare for trial. *To arraign an assise* was to cause the tenant to be called to make the plaint, and to set the cause in such order as the tenant might be enforced to answer thereunto. Litt. § 442; Co. Litt. 262b.

ARRAIGNMENT. See Arraign.

ARRAIGNS, CLERK OF. In English law. An assistant to the clerk of assise.

ARRAMEUR. In old French law. An officer employed to superintend the loading of vessels, and the safe stowage of the cargo. 1 Pet.Adm.Append. XV.

ARRANGEMENT. A setting in order. 1 El. & Bl. 540. Plan for corporate reorganization proposing to effect a composition or extension of time with reference to corporation's unsecured debts. John Hancock Mut. Life Ins. Co. v. Casey, C.C.A. Mass., 141 F.2d 104, 107.

ARRANGEMENT, DEED OF. A term used in England to express an assignment for the benefit of creditors.

ARRAS. In Spanish law. The donation which the husband makes to his wife, by reason or on account of marriage, and in consideration of the *dote,* or portion, which he receives from her. Miller v. Dunn, 62 Mo. 219. The property contributed by the husband *ad sustinenda onera matrimonii* (for bearing the expenses).

ARRAY. The whole body of jurors summoned to attend a court, as they are *arrayed* or arranged on the panel. Dane, Abr. Index; 1 Chit.Crim.Law, 536; Com.Dig. "Challenge," B. Durrah v. State, 44 Miss. 789. A ranking, or setting forth in order; the order in which jurors' names are ranked in the panel containing them. Co.Litt. 156a; 3 Bl.Comm. 359.

ARRAYER. An English military officer in the early part of the fifteenth century. His duties were similar to those of the modern Lord Lieutenant of a county.

ARREARS, or ARREARAGES. Money unpaid at the due time, as rent behind; the remainder due after payment of a part of an account; money in the hands of an accounting party. Board of Education of Glen Ellyn Tp. High School Dist. No. 87 v. Boger, 291 Ill. 191, 125 N.E. 768, 770. Indebtedness. State ex rel. City of South Euclid v. Zangerle, 145 Ohio St. 433, 62 N.E.2d 160, 162.

In arrear (arrears). Overdue and unpaid. Hollingsworth v. Willis, 64 Miss. 157, 8 So. 170. Behind in the payment of that which is due. Grand Court of Texas Independent Order of Calanthe v. Johns, Tex.Civ.App., 181 S.W. 869, 870.

ARRECT. To accuse or charge with an offense. *Arrectati,* accused or suspected persons.

ARRENDAMIENTO. In Spanish law. The contract of letting and hiring an estate or land, *(heredad.)* White, Recop. b. 2, tit. 14, c. 1.

ARRENT. In old English law. To let or demise at a fixed rent. Particularly used with reference to the public domain or crown lands; as where a license was granted to inclose land in a forest with a low hedge and a ditch, under a yearly rent, or where an encroachment, originally a purpresture, was allowed to remain on the fixing and payment of a suitable compensation to the public for its maintenance.

ARREST. To deprive a person of his liberty by legal authority. Taking, under real or assumed authority, custody of another for the purpose .of holding or detaining him to answer a criminal charge or civil demand. Ex parte Sherwood, 29 Tex.App. 334, 15 S.W. 812. Physical seizure of person by arresting officer or submission to officer's authority and control is necessary to constitute an "arrest." Thompson v. Boston Pub. Co., 285 Mass. 344, 189 N.E. 210, 213. It is a restraints however slight, on another's liberty to come and go. Turney v. Rhodes, 42 Ga.App. 104, 155 S.E. 112. It is the taking, seizing or detaining the person of another, touching or putting hands upon him in the execution of process, or any act indicating an intention to arrest. U. S. v. Benner, Bald. 234, 239, Fed.Cas.No.14,568; State v. District Court of Eighth Judicial Dist. in and for Cascade County, 70 Mont. 378, 225 P. 1000, 1001; Hoppes v. State, 105 P.2d 433, 439, 70 Okl.Cr. 179.

As used in Bankruptcy Act, § 9 (11 USCA § 27), arrest includes "imprisonment." Ex parte Harrison, D.C.Mass., 272 F. 543, 544.

One of the means which the law gives the creditor to secure the person of his debtor while the suit is pending, or to compel him to give security for his appearance after judgment. La.Code Pr c. art. 210.

As ordinarily used, tAe terms arrest and attachment coincide in meaning to some extent; though in strictness, as a distinction, an arrest may be said to be the act resulting from the service of an attachment. And in the more extended sense which is sometimes given to attachment, including the act of taking, it would seem to differ from arrest in that it is more peculiarly applicable to a taking of property, while *arrest* is more commonly used in speaking of persons.

Arrest is also applied in some instances to a seizure and, detention of personal chattels, especially of ships and vessels; thus, in admiralty actions a ship or cargo is *arrested* when the marshal has served the writ in an action in *rem.* Pelham v. Rose, 9 Wall. 103, 19 L. Ed. 602.

Civil Practice

The apprehension of a person by virtue of a lawful authority to answer the demand against him in a civil action. Gentry v. Griffith, 27 Tex. 462.

Criminal Cases

The apprehending or detaining of the person in order to be forthcoming to answer an alleged or suspected crime. Ex parte Sherwood, 29 Tex.App. 334, 15 S.W. 812.

The word *arrest* is said to be more properly used in civil cases, and *apprehension* in criminal. Thus, a man is arrested under a *capias ad respondendum,* and apprehended under a warrant charging him with larceny.

Malicious Arrest

An arrest made willfully and without probable cause, but in the course of a regular proceeding.

Parol Arrest

One ordered by a judge or magistrate from the bench, without written complaint or other proceedings, of a person who is present before him, and which is executed on the spot; as in case of breach of the peace in open court.

Rearrest

Right of an officer to take without warrant one forcibly freeing himself after arrest. Gross v.

State, 186 Ind. 581, 117 N.E. 562, 1 A.L.R. 1151, or escaping in any manner, Hefler v. Hunt, 120 Me. 10, 112 A. 675, or violating parole, Massey v. Cunningham, 169 Ark. 410, 275 S.W. 737, or failing to respond to bond for appearance, Porter v. Garmony, 148 Ga. 261, 96 S.E. 426.

Second Arrest

The "second arrest" forbidden after discharge on habeas corpus means an imprisonment based on the same information and not under a new information followed by a lawful warrant. State v. Riley, 109 Minn. 437, 124 N.W. 13. See, also, Stair v. Heska Amone Congregation, 128 Tenn. 190, 159 S.W. 840, 841.

Warrant of Arrest

A written order issued and signed by a magistrate, directed to a peace officer or some other person specially named, and commanding him to arrest the body of a person named in it, who is accused of an offense. Brown v. State, 109 Ala. 70, 20 So. 103.

ARREST OF INQUEST. Pleading in arrest of taking the inquest upon a former issue, and showing cause why an inquest should not be taken.

ARREST OF JUDGMENT. The act of staying a judgment, or refusing to render judgment in an action at law and in criminal cases, after verdict, for some matter intrinsic appearing on the face of the record, which would render the judgment, if given, erroneous or reversible. 3 Bl. Comm. 393; 3 Steph.Comm. 628; 2 Tidd, Pr. 918; Speer v. Pierce, 18 Tenn.App. 351, 77 S.W.2d 77, 78; State v. Ferguson, 165 Tenn. 61, 52 S.W.2d 140.

It is the fact that a motion in arrest of judgment is based on some defect on the face of the record or pleadings which aids in distinguishing it from a motion for a new trial. Maddox Coffee Co. v. McHan, 22 Ga.App. 198, 95 S. E. 736. It differs also from a motion to set aside a judgment, in that a motion in arrest of judgment must be made during the term when the judgment was rendered. Love v. National Liberty Ins. Co., 157 Ga. 259, 121 S.E. 648, 650. A motion in arrest of judgment is practically a demurrer, People v. Cordosco, 77 Cal.App. 780, 246 P. 461, 462, and has been abolished in some jurisdictions. State v. Sharp, Mo.Sup., 300 S.W. 501.

ARRESTANDIS BONIS NE DISSIPENTUR. In old English law. A writ which lay for a person whose cattle or goods were taken by another, who during a contest was likely to make away with them, and who had not the ability to render satisfaction. Reg.Orig. 126.

ARRESTANDO IPSUM QUI PECUNIAM RECEPIT. In old English law. A writ which issued for apprehending a person who had taken the king's prest money to serve in the wars, and then hid himself in order to avoid going.

ARRESTATIO. In old English law. An arrest (q. v.).

ARRESTEE. In Scotch law. The person in whose hands, the movables of another, or a debt due to another, are arrested by the creditor of the latter by the process of *arrestment*. 2 Kames, Eq. 173, 175.

If, in contempt of the arrestment, he make payment of the sum or deliver the goods arrested to the common debtor, he is not only liable criminally for breach of the arrestment, but he must pay the debt again to the arrester ; Erskine, Inst. 3, 6, 6.

ARRESTER. In Scotch law. One who sues out and obtains an arrestment of his debtor's goods or movable obligations. Erskine, Inst. 3. 6. 1.

ARRESTMENT. In Scotch law. Securing a criminal's person till trial, or that of a debtor till he give security *judicio sisti*. The order of a judge, by which he who is debtor in a movable obligation to the arrester's debtor is prohibited to make payment or delivery till the debt due to the arrester be paid or secured. Erskine, Inst. 3. 6. 1; 1. 2. 12.

ARRESTMENT JURISDICTIONIS FUNDAND1E CAUSA. In Scotch law. A process to bring a foreigner within the jurisdiction of the courts of Scotland. The warrant attaches a foreigner's goods within the jurisdiction, and these will not be released unless caution or security be given.

ARRESTO FACTO SUPER BONIS MERCATORUM ALIENIGENORUM. In old English law. A writ against the goods o f aliens found within this kingdom, in recompense of goods taken from a denizen in a 'foreign country, after denial of restitution. Reg.Orig. 129. The ancient civilians called it *"clarigatio,"* but by the moderns it is termed *"reprisalia."*

ARRET. Fr. A judgment, sentence, or decree of a court of competent jurisdiction.

The term is derived from the French law, and is used in Canada and Louisiana.

*Saisie arrdt* is an attachment of property in the hands of a third person. Code Pr.La. art. 209; 2 Low.Can. 77; 5 Low.Can. 198, 218. See "Saisie."

ARRETTED. Convened before a judge and charged with a crime.

*Ad rectum malefactoreirn* is, according to Bracton, to have a malefactor forthcoming to be put on his trial.

Imputed or laid to one's charge; as, no folly may be *arretted* to one under age. Bracton, 1. 3, tr. 2, c. 10; Cunningham, Diet.; Cowell.

ARRHABO. In the civil law. Earnest; money given to bind a bargain. Calvin.

ARRILE. In the civil law. Money or other valuable things given by the buyer to the seller, for the purpose of evidencing the contract; earnest. See Arra; Pot-de-vin.

*Arrhce sponsolitice* were the earnest or present given by one betrothed to the other at the betrothal.

ARRIAGE AND CARRIAGE. In English and. Scotch law. Indefinite services formerly demandable from tenants, but prohibited by statute, (20 Geo. II, c. 50, §§ 21, 22.) Holthouse; Ersk.Inst. 2, 6, 42.

ARRIER BAN. In feudal law. A second summons to join the lord, addressed to those who had neglected the first. A summons of the inferiors or vassals of the lord. Spelman, Gloss. See, also, Arierban.

ARRIERE FIEF, or FEE. In feudal law. A fief or fee dependent on a superior one; an inferior fief granted by a vassal of the king, out of the fief held by him. Montesq. Esprit des Lois, liv. 31, cc. 26, 32.

ARRIERE VASSAL. In feudal law. The vassal of a vassal.

ARRIVAL. In marine insurance, arrival of a vessel means an arrival for purposes of business, requiring an entry and clearance and stay at the port so long as to require some of the acts connected with business, and not merely touching at a port for advices, or to ascertain the state of the market, or being driven in by an adverse wind and sailing again as soon as it changes. F. S. Royster Guano Co. v. U. S., C.C.A.Va., 18 F.2d 469, 470.

"A vessel arrives at a port of discharge when she comes, or is brought, to a place where it is intended to discharge her, and where is the usual and customary place of discharge. When a vessel is insured to one or two ports, and sails for one, the risk terminates on her arrival there. If a vessel is insured to a particular port of discharge, and is destined to discharge cargo successively at two different wharves, docks, or places, within that port, each being a distinct place for the delivery of cargo, the risk ends when she has been moored twenty-four hours in safety at the first place. But if she is destined to one or more places for the delivery of cargo, and delivery or discharge of a portion of her cargo is necessary, not by reason of her having reached any destined place of delivery, but as a necessary and usual nautical measure, to enable her to reach such usual and destined place of delivery, she cannot properly be considered as having arrived at the usual and customary place of discharge, when she is at anchor for the purpose only of using such means as will better enable her to reach it. If she cannot get to the destined and usual place of discharge in the port because she is too deep, and must be lightered to get there, and, to aid in prosecuting the voyage, cargo is thrown overboard or put into lighters, such discharge does not make that the place of arrival; it is only a stopping-place in the voyage. When the vessel is insured to a particular port of discharge, arrival within the limits of the harbor does not terminate the risk, if the place is not one where vessels are discharged and voyages completed. The policy covers the vessel through the port navigation, as well as on the open sea, until she reaches the destined place." Simpson v. Insurance Co., Holmes, 137, Fed.Cas.No.12,886.

"Arrival of ship," within meaning of bills of lading requiring claims to be filed, must be construed, where MIS-delivery is charged, as meaning date when cargo is discharged or offered for delivery. The Cardiganshire, D.C. Cal., 9 F.2d 416, 420. "Arrival" within the immigration laws means compliance with the requirements entitling an alien to entry. See 8 USCA §§ 106, 380. In re Kempson, D. C.Wash., 14 F.2d 668, 669.

ARRIVE. To come to a particular place; to reach a particular or certain place. Thompson v. U. S., 1 Brock. 411, Fed.Cas.No.13,985; 8 B. & C. 119.

The words "arrive" and "enter" are not always synonymous; there certainly may be an arrival without an actual entry or attempt to enter. United States v. Open Boat, 5 Mason, 120, 132, Fed.Cas.No.15,967. And where a vessel from a foreign port, laden with liquors, anchored within four leagues of the coast, and the master without a permit therefor allowed part of the cargo to be taken away, with the intention of so disposing of the entire cargo, the vessel had "arrived" within the meaning of Tariff Act 1922, § 586 (19 USCA § 488). The Cherie, C.C.A.Me., 13 F.2d 992, 993.

ARROGATION. In the civil law. The adoption of a person who was of full age or *sui juris*. 1 Browne, Civil & Adm.Law, 119; Dig. 1, 7, 5; Inst. 1, 11, 3. Reinders v. Koppelmann, 68 Mo. 497, 30 Am.Rep. 802.

ARRONDISSEMENT. In France, one of the subdivisions of a department.

ARSZE ET PENSAT1E. Burnt and weighed. A term formerly applied to money tested or assayed by fire and by weighing.

ARSENALS. Store-houses for arms; dock-yards, magazines, and other military stores.

ARSER IN LE MAIN. Fr. Burning in the hand. The punishment by burning or branding the left thumb of lay offenders who claimed and were allowed the benefit of clergy, so as to distinguish them in case they made a second claim of clergy. 5 Coke, 51; 4 Bl.Comm. 367; *Termes de la Ley.*

ARSON. At common law, the malicious burning of the house or outhouse of another. 4 Bla.Com. 220; Thacker v. Commonwealth, 219 Ky. 789, 294 S.W. 491, 492; State v. Berry, 188 La. 612, 177 So. 684, 686; Commonwealth v. Cooper, 264 Mass. 378, 162 N.E. 733, 734.

At common law burning buildings other than dwelling houses is not arson. Sawyer v. State, 100 Fla. 1603, 132 So. 188, 193. Part of building ignited sufficient to establish corpus delicti. State v. Caliendo, 4 A.2d 837, 840, 136 Me. 514.

At common law it must be the house of another. 1 Bish. Cr.Law, § 389; State v. Beckwith, Me., 198 A. 739, 742. But it is now an offense to burn one's own house under the statutes of New Hampshire, Arkansas, California, and other states. State v. Blumenthal, 136 Ark. 532, 203 S.W. 36, 37, L.R.A.1918E, 482.

Whether "house" or "dwelling house" be used in statute defining the crime may be of importance in determining whether occupancy is or is not an element. 1 Hale, P.C. 566, 567; Commonwealth v. Barney, 64 Mass. (10 Cush.) 478. Some states have expressly eliminated occupancy as an element, State v. Snover, 101 N.J.Law, 543, 126 A. 850 ; P.L. 1919, p. 257; while others have made it a distinction between degrees of the crime, People v. Abrams, 174 Cal. 172, 162 P. 395, 396.

In several states, this crime is divided into arson in the first, second, and third degrees, the first degree including the burning of an inhabited dwelling-house in the nighttime; the second degree, the burning (at night) of a building other than a dwelling-house, but so situated with reference to a dwelling-house as to endanger it; the third degree, the burning of any building or structure not the subject of arson in the first or second degree, or the burning of property, his own or another's with intent to defraud or prejudice an insurer thereof. State v. Jessup, 42 Kan. 422, 22 P. 627.

ARSURA. The trial of money by heating it after it was coined. The loss of weight occasioned by this process. A pound was said to burn so many pence *(tot ardere denarios)* as it lost by the fire. Spelman. The term is now obsolete.

ART. Systematic application of knowledge or skill in effecting a desired result; also an employment, occupation or business requiring such knowledge or skill; a craft; as industrial arts..

Jones Bros. Co. v. Underkoffler, D.C.Pa., 16 F.Supp. 729, 730; Miller v. State, 9 Okl.Cr. 255, 131 P. 717,. 718, L.R.A.1915A, 1088. A principle put in practice and applied to some art, machine, manufacture, or composition of matter. Earle v. Sawyer, 4 Mason, 1, Fed.Cas.No.4,247.

In the law of patents, this term means a useful art or manufacture which is beneficial and which is described with exactness in its mode of operation. Such an art can be protected only in the mode and to the extent thus described. Jacobs v. Baker, 7 Wall. 297, 19 L.Ed. 200. It is synonymous with process or method when used to produce a useful result, and may be either a force applied, a mode of application, or the specific treatment of a specific object, and must produce physical effects. Emmett v. Metals Processing Corporation, C.C.A.Ariz., 118 F.2d 796, 798.

—Prior Art. In patent law, something that a man skilled in the art may by diligence discover. Davis-Bournonville Co. v. Alexander Milburn Co., C.C.A. N.Y., 1 F.2d 227, 231.

In seduction cases, "art" means the skillful and systematic arrangement of means for the attainment of a desired end. Hayes v. State, 19 Ala. App. 241, 96 So. 647.

ART, WORDS OF. Words used in a technical sense; words scientifically fit to carry the sense assigned them.

ART AND PART. In Scotch law. The offense committed by one who aids and assists the commission of a crime, but who i$ not the principal or chief actor in its actual commission. An accessory. A principal in the second degree. Paters. Comp.

ART MUSEUM. A building containing works of art. In re Everson's Will, 52 N.Y.S.2d 395, 399, 268 App.Div. 425.

ARTESIAN BASIN. A body of water more or less compact, moving through soils with more or less resistance. Justesen v. Olsen, 40 P.2d 802, 810, 86 Utah, 158.

ARTESIAN WELL. A well bored through impermeable strata into a subterranean body of water which, being under pressure, rises naturally to the surface. Loosely, any deep bored well. 6 C.J.S. p. 773.

ARTHEL, ARDHEL, or ARDDELIO. To avouch; as if a man were taken with stolen goods in his possession he was allowed a lawful *arthel, e.,* vouchee, to clear him of the felony; but provision was made against it by 28 Hen. VIII, c. 6. Blount,

ARTICLE. A separate and distinct part of an instrument or writing comprising two or more particulars; one of several things presented as connected or forming a whole. Carter v. Railroad Co., 126 N.C. 437, 36 S.E. 14. A particular object or substance, a material thing or a class of things. People v. Epstean, 170 N.Y.S. 68, 73, 102 Misc. 476. Material or tangible object. Gayer v. Whelan, 59 Cal.App.2d 255, 138 P.2d 763, 768. "Thing" of value. Gayer v. Whelan, 59 Cal.App.2d 255, 138 P.2d 763, 768.

In English ecclesiastical law. A complaint exhibited in the ecclesiastical court by way of libel. The different parts of a libel, responsive allegation, or counter allegation in the ecclesiastical courts. 3 Bl.Comm. 109.

In Scotch practice. A subject or matter; competent matter. "Article of dittay." 1 Broun, 62. A "point of dittay." 1 Swint. 128, 129.

ARTICLED CLERK. In English law. A clerk bound to serve in the office of a solicitor in consideration of being instructed in the profession. This is the general acceptation of the term; but it is said to be equally applicable to other trades and professions. Reg. v. Reeve, 4 Q.B. 212.

ARTICLES. 1. A connected series of propositions; a system of rules. The subdivisions of a document, code, book, etc. A specification of distinct matters agreed upon or established by authority or requiring judicial action.

2. A statute; as having its provisions articulately expressed under distinct heads. Several of the ancient English statutes were called "articles," *(articuli.)*

3. A system of rules established by legal authority; as *articles* of war, *articles* of the navy, *articles* of faith. (See *infra.)*

4. A contractual document executed between parties, containing stipulations or terms of agreement; as *articles* of agreement, *articles* of partnership,

5. A naval term meaning employment contract. South Chicago Coal & Dock Co. v. Bassett, C.C.A. Ill., 104 F.2d 522, 526.

6. In chancery practice. A formal written statement of objections filed by a party, after depositions have been taken, showing ground for discrediting the witnesses.

7. In ecclesiastical law. A complaint in the form of a libel exhibited to an ecclesiastical court. See Article.

ARTICLES APPROBATORY, In Scotch law. That part of the proceedings which corresponds to the answer to the charge in an English bill in chancery. Paters. Comp.

ARTICLES IMPROBATORY. In Scotch law. Articulate averments setting forth the facts relied upon. Bell. That part of the proceedings which corresponds to the charge in an English bill in chancery to set aside a deed. Paters. Comp. The answer is called "articles approbatory."

ARTICLES, LORDS OF. A committee of the Scottish parliament, which, in the mode of its election, and by the nature of its powers, was calculated to increase the influence of the' crown, and to confer upon it a power equivalent to that of a negative before debate. This system appeared inconsistent with the freedom of parliament, and at

the revolution the convention of estates declared it a grievance, and accordingly it was suppressed by Act 1690, c. 3. Wharton.

ARTICLES OF AGREEMENT. A written memorandum of the terms of an agreement.

It is a common practice for persons to enter into articles of agreement, preparatory to the execution of a formal deed, whereby it is stipulated that one of the parties shall convey to the other certain lands, or release his right to them, or execute some other disposition of them.

When persons form voluntary associations for religious, literary, social, or other purposes, and adopt rules by which to regulate their conduct and measure their rights, by the provisions of which members may be admitted and expelled, such rules are articles of agreement, to which all who have become members are parties, and by which they must be governed in their relations to the associations. Brown v. Harris 'County Medical Soc., Tex.Civ.App., 19-1 S. W. 1179, 1180.

ARTICLES OF ASSOCIATION, OR OF INCORPORATION. Articles subscribed by the members of a joint-stock company or corporation organized under a general law, and which create the corporate union between them. Such articles are in the nature of a partnership agreement, and commonly specify the form of organization, amount of capital, kind of business to be pursued, location of the company, etc. Articles of association are to be distinguished from a charter, in that the latter is a grant of power from the sovereign or the legislature.

ARTICLES OF CONFEDERATION. The name of the instrument embodying the compact made between the thirteen original states of the Union, before the adoption of the present constitution.

ARTICLES OF FAITH. In English law. The system of faith of the Church of England, more commonly known as the "Thirty-Nine Articles."

ARTICLES OF IMPEACHMENT. A formal written allegation of the causes for impeachment; answering the same office as an indictment in an ordinary criminal proceeding.

ARTICLES OF INCORPORATION. The instrument by which a private corporation is formed and organized under general corporation laws. People v. Golden Gate Lodge, 128 Cal. 257, 60 P. 865. See Articles of Association.

ARTICLES OF PARTNERSHIP. A written agreement by which the parties enter into a copartnership upon the terms and conditions therein stipulated.

ARTICLES OF RELIGION. In English ecclesiastical law. Commonly called the "Thirty-Nine Articles ;" a body of divinity drawn up by the convocation in 1562, and confirmed by James I.

ARTICLES OF ROUP. In Scotch law. The terms and conditions under which property is sold at auction.

ARTICLES OF SET. In Scotch law. An agreement for a lease. Paters. Comp.

ARTICLES OF THE CLERGY. The title of a statute passed in the ninth year of Edward II. for the purpose of adjusting and settling the great questions of cognizance then existing between the ecclesiastical and temporal courts. 2 Reeve, Hist. Eng.Law, 291-296.

ARTICLES OF THE NAVY. A system of rules prescribed by act of parliament for the government of the English navy; also, in the United States, there are articles for the government of the navy.

ARTICLES OF THE PEACE. A complaint made or exhibited to a court by a person who makes oath that he is in fear of death or bodily harm from some one who has threatened or attempted to do him injury. The court may thereupon order the person complained of to find sureties for the peace, and, in default, may commit him to prison. 4 Bl.Comm. 255.

ARTICLES OF UNION, In English law. Articles agreed to, A. D. 1707, by the parliaments of England and Scotland, for the union of the two kingdoms. They were twenty-five in number. 1 BL Comm. 96.

ARTICLES OF WAR. Codes framed for the government of a nation's army or navy.

ARTICULATE ADJUDICATION, In Scotch law. Where the creditor holds several distinct debts, a separate adjudication for each claim is thus called.

ARTICULATED PLEADING. The stating in separate paragraphs, separately numbered, of each material fact of the petition. Newspaper Feature Service v. Southern Pub. Co., 140 La. 702, 73 So. 777.

ARTICULATELY. Article by article; by distinct clauses or articles; by separate propositions.

ARTICULI. Lat. Articles; items or heads. A term applied to some old English statutes, and occasionally to treatises.

ARTICULI CLERI. "Articles of the clergy" *(q. v.).* See Circumspecte Agatis,

ARTICULI DE MONETA. Articles concerning money, or the currency. The title of a statute passed in the twentieth year of Edward I. 2 Reeve, Hist.Eng.Law, 228; Crabb, Eng.Law (Amer. Ed.) 167.

ARTICULI MAGN1E CHARTAE. The preliminary articles, forty-nine in number, upon which the *Magna Charta* was founded.

ARTICULI SUPER CHARTAS. Articles upon the charters. The title of a statute passed in the twenty-eighth year of Edward I. st. 3, confirming or enlarging many particulars in *Magna Charta,* and the *Charta de Foresta,* and appointing a method for enforcing the observance of them, and for the punishment of offenders. 2 Reeve, Hist. Eng.Law, 103, 233.

ARTICULO MORTIS. (Or more commonly *in articulo mortis.)* At the point of death; in the

article of death, which means at the moment of death; in the last struggle or agony. Succession of Villa, 132 La. 714, 61 So. 765, 770.

ARTIFICE. An ingenius contrivance or device of some kind, and, when used in a bad sense, it corresponds with trick or fraud. United States v. Corlin, D.C.Cal., 44 F.Supp. 940, 943. It implies craftiness and deceit, and imports some element of moral obliquity. Davis v. Boston Elevated Ry. Co., 235 Mass. 482, 126 N.E. 841, 845; Finch v. Gibson, 140 Tenn. 134, 203 S.W. 759, 761.

A representation contrary to a well-known fact, such as a representation that pregnancy will not result from natural sexual intercourse, will not constitute artifice, deception, or promises.

ARTIFICER. One who buys goods in order to reduce them, by his own art or industry, into other forms, and then to sell them. Lansdale v. Brashear, 3 T.B.Mon. (Ky.) 335.

One who is actually and personally engaged or employed to do work of a mechanical or physical character, not including one who takes contracts for labor to be performed by others. Ingram v. Barnes, 7 El. & Bl. 135; Chawner v. Cummings, 8 Q.B. 321.

One who is master of his art, and whose employment consists chiefly in manual labor. Wharton; Cunningham.

ARTIFICIAL. Is in opposition to the word "natural". California Casualty Indemnity Exchange v. Industrial Accident Commission of California, 13 Ca1.2d 529, 90 P.2d 289; Created by art, or by law; existing only by force of or in contemplation of law.

ARTIFICIAL FORCE. In patent law. A natural force so transformed in character or energies by human power as to possess new capabilities of action; this transformation of a natural force into a force practically new involves a true inventive act. Wall v. Leck, 60 Fed. 555, 13 C.C.A. 630.

ARTIFICIAL MEMBER OF BODY. A substitute for, and not a mere aid to, a natural part, organ, limb, or other separable part of body. California Casualty Indemnity Exchange v. Industrial Accident Commission, Cal.App., 82 P.2d 1115, 1116.

ARTIFICIAL PERSONS. Persons created and devised by human laws for the purposes of society and government, as distinguished from natural persons. Corporations are examples of artificial persons. 1 Bl.Comm. 123. Chapman v. Brewer, 43 Neb. 890, 62 N.W. 320, 47 Am.St.Rep. 779.

ARTIFICIAL PRESUMPTIONS. Also called "legal presumptions;" those which derive their force and effect from the law, rather than their natural tendency to produce belief. 3 Starkie, Ev. 1235. Gulick v. Loder, 13 N.J.Law, 72, 23 Am.Dec. 711.

ARTIFICIAL SUCCESSION. The succession between predecessors and successors in a corporation aggregate or sole. Thomas v. Dakin, 22 Wend. (N.Y.) 100.

ARTIFICIAL WATER COURSE. See Water Course.

ARTIFICIALLY. Technically; scientifically; using terms of art. A will or contract is described as "artificially" drawn if it is couched in apt and technical phrases and exhibits a scientific arrangement.

ARTIFICIALLY DEVELOPED WATER. "Artificially developed water," to which one may acquire right superior to adjudicated rights of earlier appropriators of natural waters of stream into which he turns it, is water produced and contributed by him, which would not have reached stream if left to flow in accordance with natural laws. C.L. § 1766. In re Nix, 45 P.2d 176, 178, 96 Colo. 540.

ARTISAN. One skilled in some kind of mechanical craft or art; a skilled mechanic. O'Clair v. Hale, 25 Misc.Rep. 31; Warner Memorial University v. Ritenour, Tex.Civ.App., 56 S.W.2d 236, 237.

As used in lien statutes, the term includes the architect, Kansas City Southern Ry. Co. v. Wallace, 38 Okl. 233, 132 P. 908, 911, 46 L.R.A.,N.S., 112, but not a subcontractor, Huffman v. McDonald, Tex.Civ.App., 261 S.W. 146, 147. An optometrist is not an "artisan." Swanz v. Clark, 71 Mont. 385, 229 P. 1108.

ARUBA. An old English law term, signifying a day's work in plowing.

ARVIL–SUPPER. A feast or entertainment made at a funeral in the north of England; *arvil bread* is bread delivered to the poor at funeral solemnities, and arvil, *arval,* or *arfal,* the burial or funeral rites. Cowell.

AS or A/S or A/s. Account sales; also after sight, at sight.

AS. Lat. In the Roman and civil law. A pound weight; and a coin originally weighing a pound, (called also *"libra")* divided into twelve parts, called *"uncice,"*

The parts were reckoned (as may be seen in the law, *Servum de hceredibus,* Inst. lib. xiii. *Pandect)* as follows : *uncia,* 1 ounce ; *sextans,* 2 ounces ; *triens,* 3 ounces; *quadrans,* 4 ounces ; *quincunx,* 5 ounces; *semis,* 6 ounces; *septunx,* 7 ounces; *bes,* 8 ounces; *dodrans,* 9 ounces ; *dextans,* 10 ounces ; *deunx,* 11 ounces.

Any integral sum, subject to division in certain proportions.

Frequently applied in the civil law to inheritances ; the whole inheritance being termed "as," and its several proportionate parts "sextans," *"quadrans,"* etc. Burrill.

The term "as," and the multiples of its *uncice,* were also used to denote the rates of interest. 2 Bl.Comm. 462, note m.

AS. Used as an adverb, etc., means like, similar to, of the same kind, in the same manner, in the manner in which. Van Pelt v. Hilliard, 75 Fla. 792, 78 So. 693, 697, L.R.A.1918E 639; Price v. Skylstead, 69 Mont. 453, 222 P. 1059, 1060. It may also have the meaning of because, since, or it being the case that; State v. Rudman, 126 Me. 177, 136 A. 817, 819; in the character or under the name of; State v. Blue, 134 La. 561, 64 So. 411, 414; when; Shane Bros. & Wilson Co. v. Barrett,

71 Ind.App. 313, 124 N.E. 780, 781; With significance of in degree, to that extent, so far. Snyder and Blankfard Co., v. Farmers Bank of Tifton, 178 Md. 601, 16 A.2d 837, 841.

AS AGAINST; AS BETWEEN. These words contrast the relative position of two persons, with a tacit reference to a different relationship between one of them and a third person. For instance, the temporary bailee of a chattel is entitled to it as *between* himself and a stranger, or *as against* a stranger; reference being made by this form of words to the rights of the bailor. Wharton.

AS FAR AS HUMAN CARE AND FORESIGHT WILL GO. Means for utmost care and diligence of very cautious persons, and makes one responsible for even slightest neglect. Kline v. Santa Barbara Consol. Ry. Co., 90 P. 125, 127, 150 Cal. 741.

AS IS. A sale of goods by sample "as is" requires that the goods be of the kind and quality represented, even though they be in a damaged condition. Schwartz v. Kohn, Sup., 155 N.Y.S. 547, 548. Use of expression in sales agreement that goods are sold "as is" implies that buyer is taking delivery of goods in some way defective and upon express condition that he must trust to his own examination. Roby Motors Co. v. Cade, La.App., 158 So. 840, 841.

AS LONG AS. The phrase "as long as life doth last," in a will, is tantamount to "forever." In re Brown, 119 Kan. 402, 239 P. 747.

AS OF COURSE. Under a statute providing that an attachment will be dissolved, "as of course," upon defendant's entering his appearance and filing his answer, the quoted words mean when asked by defendant. Pitman v. West, 198 Mo.App. 92, 199 S.W. 756, 757.

AS PER. "As per" is a sort of law and business term which is hardly susceptible of literal translation, but which is commonly understood to mean, "in accordance with," or "in accordance with the terms of," or "as by the contract authorized." Continental Bank & Trust Co. v. Times Pub. Co., 142 La. 209, 76 So. 612, 617, L.R.A.1918B, 632.

AS SOON AS. This term has a relative meaning according to the thing which is to be done. Eichelbaum & Smith v. Bishop, 75 Pa.Super.Ct. 528, 529. It often denotes merely a reasonable time; Childers v. Brown, 81 Or. 1, 158 P. 166, 168, Ann. Cas.1918D, 170; and it may be the equivalent of "whenever"; People v. Merhige, 180 N.W. 418, 422, 212 Mich. 601. Sometimes it means immediately. Columbia Digger Co. v. Rector, D.C.S.D., 215 F. 618, 630.

AS SOON AS MAY BE. Promptly and with due diligence; as soon as was reasonably possible; within a reasonable time; as soon as possible; forthwith; as soon as they conveniently can. George A. Fuller Co. v. Jersey City, 21 N.J.Misc. 38, 29 A.2d 720, 722.

AS SOON AS POSSIBLE. When used with reference to the time of performing some act, such as the shipment of goods, these words mean merely within a reasonable time. Birmingham Paper Co. v. Holder, 24 Ga.App. 630, 101 S.E. 692; National Cash Register Co. v. McCann, 140 N.Y.S. 916, 920, 80 Misc. 165 ("as soon as possible" requires a much more speedy fulfillment than within a reasonable time).

AS SOON AS PRACTICABLE. Means reasonable time. Callaway v. Central Surety & Insurance Corporation, C.C.A.Tex., 107 F.2d 761, 762; London Guarantee & Accident Co. v. Shafer, D.C.Ohio, 35 F.Supp. 647, 649; London Guarantee & Accident Co. v. Shafer, D.C.Ohio, 32 F.Supp. 905, 908; Unverzagt v. Prestera, 13 A.2d 46, 48, 339 Pa. 141.

These words are not synonymous with "as soon as possible" ; they mean ordinarily as soon as reasonably can be expected. Texas Employers' Ins. Ass'n v. Mummey, Tex. Civ.App., 200 S.W. 251, 253; or "in due time", Texas Employers' Ins. Ass'n v. Mummey, Tex.Civ.App., 200 S.W. 251, 252. But the words have also been construed as practically synonymous with speedily. Roberson v. Weaver, 145 Ga. 620, 89 S.E. 769, 772.

AS SPEEDILY AS POSSIBLE. Means within reasonable time or without unreasonable delay, having regard to all the circumstances of the case and the things to be done. Tatum v. Levi, 117 Cal. App. 83, 3 P.2d 963, 967.

AS SUCH. When used to give some example of a rule, is never exclusive of other cases which that rule is made to embrace. Dinnat v. Succession of Lewis, 8 La.App. 820, 821.

ASCEND. To go up; to pass up or upwards; to go or pass in the ascending line. 4 Kent, Comm. 393, 397.

ASCENDANTS. Persons With whom one is related in the ascending line; one's parents, grandparents, great-grandparents, etc.

ASCENDIENTES. In Spanish law. Ascendants; ascending heirs; heirs in the ascending line. Schm.Civil Law, 259.

ASCENT. Passage upwards; the transmission of an estate from the ancestor to the heir in the ascending line. See 4 Kent, Comm. 393, 397.

ASCERTAIN. To fix; to render certain or definite; to estimate and determine; to clear of doubt or obscurity. Pughe v. Coleman, Tex.Civ.App., 44 S.W. 578. To insure as a certainty. United States v. Foster, C.C.A.Iowa, 131 F.2d 3, 7. To find out by investigation, U. S. v. Carver, 43 S.Ct. 181, 182, 260 U.S. 482, 67 L.Ed. 361. Sometimes it means to "assess", Commonwealth v. Deford Co., 137 Va. 542, 120 S.E. 281, 285; or to "hear, try, and determine," In re Higgins' Estate, 143 N.Y.S. 552, 556, 81 Misc. 579.

ASCERTAINED AS AFORESAID. Manner theretofore prescribed. State ex rel. Walker v. Harrington, Del., 30 A.2d 688, 693, 3 Terry 246.

ASCRIPTITIUS (or ASCRIPTITIUS). In Roman law. A foreigner who had been registered and naturalized in the colony in which he resided. Cod. 11, 47.

A man bound to the soil but not a slave. 2 Holdsw.Hist.E.L. 217. See Adscriptitii.

ASCUN, or ASCUNS. L. Fr. Any; any one; some. Adams Gloss.

ASESINATO. In Spanish law, murder. The term is said to be derived from the "assassins" of Syria. Escriche Diccionario. The offense corresponds closely to the common-law crime of murder in the first degree. U. S. v. Alias, 18 Philippine 453, 455; U. S. v. Pico, 18 Philippine 386, 388.

ASEXUALIZATION. See Vasectomy.

ASIDE. On one side; apart. *To set aside.* To annul; to make void. State v. Primm, 61 Mo. 171.

ASK. In an affidavit wherein affiant asks that a cause be reinstated and set down for trial, "asks" is practically synonymous with "moves." Harris v. Chicago House-Wrecking Co., 314 Ill. 500, 145 N.E. 666, 669.

ASPECT. View; object; possibility. Implies the existence of alternatives. Used in the phrases "bill with a double aspect" and "contingency with a double aspect."

ASPERSIONS. "Aspersions" may mean the making of calumnious report or may mean nothing more than criticism or censure. Fitts v. Davis, 269 F. 1018, 1019, 50 App.D.C. 234.

ASPHALT. A brown to black, solid bituminous substance occurring native at the Dead Sea, in Trinidad, and elsewhere, and also obtained as a residue from petroleum, coal tar, lignite tar, etc., and consists chiefly of a mixture of hydrocarbons and varies from hard and brittle to plastic forms. Asphalt Revetment Co. v. United States, 48 F. Supp. 520, 523, 98 Ct.C1. 289.

ASPHYXIA. Apparent death, suspended animation, in living organism due to deficiency of oxygen and excess of carbon dioxide in the blood. Levinson v. Reliance Life Ins. Co. of Pittsburgh, Pa., 184 Md. 453, 41 A.2d 485, 487. Safe Deposit & Trust Co. of Baltimore v. New York Life Ins. Co., D.C.Md., 14 F.Supp. 721, 723.

ASPHYXIA CARBONICA. A suffocation from inhalation of coal gas, water gas, or carbon monoxide. Levinson v. Reliance Life Ins. Co. of Pittsburgh, Pa., Md., 184 Md. 453, 41 A.2d 485, 487.

ASPHYXIATION. A state of asphyxia. Stone v. Physicians Casualty Ass'n of America, 130 Neb. 769, 266 N.W. 605, 607.

ASPIRIN. A coal tar product commonly kept in drug stores and sold for medicinal purposes. It is not a proprietary or patent medicine, but is a drug or medicine, within a statute prohibiting retailing by one not a registered pharmacist. State v. Zotalis, 172 Minn. 132, 214 N.W. 766, 767. People v. Garcia, 1 Cal.App.2d 761, 32 P.2d 445, 447. State v. Jewett Market Co., 209 Iowa, 567, 228 N.W. 288, 289.

ASPORTATION. The removal of things from one place to another. The carrying away of goods ; one of the circumstances requisite to constitute the offense of larceny. 4 Bl.Comm. 231. Rex v. Walsh, 1 Moody, Cr.Cas. 14, 15. Any appreciable changing of the location of the property involved with felonious intent. People v. Ashworth, 222 N.Y.S. 24, 27, 220 App.Div. 498; Banks v. State, 133 Ark. 169, 202 S.W. 43.

To constitute "asportation," the thing taken must have been in entire or absolute possession of taker. Adams v. Commonwealth, 153 Ky. 88, 154 S.W. 381, 44 L.R.A.,N.S., 637. But goods need not be removed from owner's premises, but act of thief in putting property into sack which he carries is sufficient. 21 Okl.St.Ann. § 1701. Brinkley v. State, 60 Okl.Cr. 106, 61 P.2d 1023, 1025. The slightest removal of goods from the place where the owner placed them or wanted them to be is sufficient. Driggers v. State, 118 So. 20, 21, 96 Fla. 232.

ASPORTAVIT. He carried away. Sometimes used as a noun to denote a carrying away. An *"asportavit* of personal chattels." 2 H.B1. 4.

ASSACH. In old Welsh law. An oath made by compurgators. Brown.

ASSART. In English law. The offense committed in the forest, by pulling up the trees by the roots that are thickets and coverts for deer, and making the ground plain as arable land. It differs from waste, in that waste is the cutting down of coverts which may grow again, whereas assart is the plucking them up by the roots and utterly destroying them, so that they can never afterward grow. This is not an offense if done with license to convert forest into tillage ground. Consult *Manwood's Forest Laws,* pt. I, p. 171. Wharton. See Essarter.

ASSART RENTS. Rents paid to the Crown for assarted lands.

ASSASSINATION. Murder committed for hire, without provocation or cause of resentment given to the murderer by the person upon whom the crime is committed. Ersk.Inst. 4, 4, 45. A murder committed treacherously or by stealth or surprise, or by lying in wait. Sorrell v. State, 135 Tex.Cr.R. 535, 120 S.W.2d 1058, 1059.

ASSATH. An ancient custom in Wells, by which a person accused of crime could clear himself by the oaths of three hundred men. It was abolished by St. 1 Hen. V. c. 6. Cowell; Spelman.

AssAxaz . An intentional, unlawful offer of corporal injury to another by force, or force unlawfully directed toward person of another, under such circumstances as create well-founded fear of imminent peril, coupled with apparent present ability to execute attempt, if not prevented. State v. Staw, 97 N.J.L. 349, 116 A. 425; Naler v. State, 148 So. 880, 25 Ala.App. 486.

Intention to harm is of the essence, Raefeldt v. Koenig, 152 Wis. 459, 140 N.W. 56, 57, L.R.A.1918E, 1052; but.geperal malevolence or recklessness is sufficient, State v. Fine, 324 Mo. 19 , ence str ing intentionally, or by driving machine in reckless disregard of human life and safety is sufficient. Webb v. State, 68 Ga.App. 466, 23 S.E.2d 578, 580. It i of Wit. People v. Dong Pok Yip, 164 Cal. 143, 127 P. 1031,

1032; hence operation without consent is assau . Dicenzo v. Berg, a. 16 A.2d 15, 6. ssau t must have been unwarranted, but it need not have been committed in anger. McGovern v. Weis, 39 N.Y.S.2d 115, 118, 265 App. Div. 367; hence self-defense is not "assault". City of Gaffney v. Putnam, 197 S.C. 237, 15 S.E.2d 130, 131. Mere words, although provoking or insulting, are insufficient; Western Union Telegraph Co. v. Hill, C.C.A.Ala., 67 F.2d 487; Dahlin v. Fraser, 206 Minn. 476, 288 N.W. 851, 852.

In some jurisdictions degrees of the offense are established, as first degree, State v. Laughlin, Mont., 73 P.2d 718, 721; second degree, State v. Reynolds, 94 Wash. 270, 162 P. 358, 359; and third degree, State v. Steele, 83 Wash. 470, 145 P. 581; State v. Laughlin., 105 Mont. 490, 73 P.2d 718, 721.

### Aggravated Assault

One committed with the intention of committing some additional crime; or one attended with circumstances of peculiar outrage or atrocity. This class includes assault with a dangerous or deadly weapon; Brinkley v. State, 82 Tex.Cr.R. 150, 198 S.W. 940; assault upon infants or females, if it create a sense of shame; Wren v. State, 27 Ariz. 491, 232 P. 398; and assault of lust, meaning an assault, less than felonious, with intent to have improper sexual connection; State v. Eslick, Mo.App., 216 S.W. 974, 975.

ASSAULT WITH INTENT TO COMMIT MANSLAUGHTER. An unlawful assault committed in such manner and with such means as would have resulted in commission of crime of manslaughter if person assaulted had then and there died from effects of assault. Lassiter v. State, 98 Fla. 370, 123 So. 735; State v. Crutcher, 1 N.W.2d 195, 199, 231 Iowa 418.

ASSAULT WITH INTENT TO COMMIT MURDER. To constitute this assault and specific intent to kill, actuated by malice aforethought, must concur. Perez v. State, 114 Tex.Cr.R. 473, 22 S.W.2d 309, 310; Griffin v. State, 177 S.E. 511, 50 Ga.App. 213.

ASSAULT WITH INTENT TO COMMIT RAPE. Is constituted by the existence of the facts which bring the offense within the definition of an assault, coupled with an intention to commit the crime of rape. Steptoe v. State, 133 Tex.Cr.R. 194, 115 S.W.2d 916, 917; State v. Jackson, 200 La. 432, 8 So.2d 285, 286.

ASSAULT WITH INTENT TO COMMIT ROBBERY. Involves an assault as well as an intent to commit robbery. Foss v. State, 36 Ohio App. 417, 173 N.E. 296, 297.

### Secret Assault

Under a North Carolina statute, to warrant conviction for malicious, "secret assault," state must prove all essential elements of crime, namely, malice, use of deadly weapon in secret manner, with intent to kill. State v. Kline, 190 N.C. 177, 129 S.E. 417, 418.

It is not essential, however, that the person assaulted be unconscious of the presence of his adversary, though the purpose of such adversary must not be known. State v. Oxendine, 187 N.C. 658, 122 S.E. 568, 571.

### Simple Assault

One committed with no intention to do any other injury. An offer or attempt to do bodily harm which falls short of an actual battery; an offer or attempt to beat another, but without touching him; for example, a blow delivered within striking distance, but which does not reach its mark. Norton v. State, 14 Tex. 393. Also, sometimes, the use of physical violence upon another, without circumstances of aggravation. Ratcliff v. State, 106 Tex.Cr.R. 37, 289 S.W. 1072, 1074. "Simple assault and battery" is an unlawful act of violent injury to another, unaccompanied by any circumstances of aggravation. State v. Jones, 133 S.C. 167, 130 S.E. 747, 751. And see State v. Staw, 97 N.J.L. 349, 116 A. 425.

ASSAY. The proof or trial, by chemical experiments, of the purity or fineness of metals,—particularly of the precious metals, gold and silver. West v. State, 140 Tex.Cr.R. 493, 145 S.W.2d 580, 584.

A trial of weights and measures by a standard; as by the constituted authorities, clerks of markets, etc. Reg.Orig. 280.

A trial or examination of certain commodities, as bread, cloths, etc. Cowell; Blount. See Annual Assay.

ASSAY OFFICE. The staff of persons by whom (or the building or department in which) the process of assaying gold and silver, required by government, incidental to maintaining the coinage, is conducted.

ASSAYER. One whose business it is to make assays of the precious metals. West v. State, 140 Tex.Cr.R. 493, 145 S.W.2d 580, 584.

ASSAYER OF THE KING. An officer of the royal mint, appointed by St. 2 Hen. VI. c. 12, who received and tested the bullion taken in for coining; also called *"assayator. regis."* Cowell; Termes de la Ley.

ASSECURARE. To assure, or make secure by pledges, or any solemn interposition of faith. Cowell; Spelman.

ASSECURATION. In European law. Assurance; insurance of a vessel, freight, or cargo. Ferrière.

ASSECURATOR. In maritime law. An insurer, *(aversor periculi.)* Locc. de Jure Mar. lib. 2, c. 5, § 10.

ASSEDATION. In Scotch law. An old term, used indiscriminately to signify a lease or feu-right. Bell; Ersk.Inst. 2, 6, 20.

ASSEMBLAGE. A collection of persons. Also the act of coming together. State v. Breen, 110 Kan. 817, 205 P. 632, 633. Public address upon public grounds. In re Whitney, 57 Cal.App.2d 167, 134 P.2d 516, 521.

ASSEMBLE. When applied to a machine, "assemble" means to collect or gather together the parts and place them in their proper relation to

each other to constitute the machine. Citizens' Vat. Bank v. Bucheit, 14 Ala.App. 511, 71 So. 82, 38.

&SSEMBLY. The concourse or meeting together )f a considerable number of persons at the same place. Also the persons so gathered.

*Popular* assemblies are those where the people meet to deliberate upon their rights; these are guaranteed by the constitution. Const.U.S.Amend. art. 1.

*Political* assemblies are those required by the constitution and laws: for example, the general assembly.

The lower or more numerous branch of the legislature in many of the states is also called the "Assembly" or "House of Assembly," but the term seems to be an appropriate one to designate any political meeting required to be held by law.

ASSEMBLY GENERAL. The highest ecclesiastical court in Scotland, composed of a representation of the ministers and elders of the church, regulated by Act 5th Assem. 1694.

ASSEMBLY, UNLAWFUL. In criminal law. The assembling of three or more persons together to do an unlawful act, who separate without actually doing it, or making any motion towards it. 3 Inst. 176; 4 Bl.Comm. 146. It differs from a riot or rout, because in each of the latter cases there is some act done besides the simple meeting. 1 Bish.Crim.Law, § 535; 2 Bish.Crim.Law, §§ 1256, 1259.

ASSENT. Compliance; approval of something done; a declaration of willingness to do something in compliance with a request. Norton v. Davis, 83 Tex. 32, 18 S.W. 430; Appeal of Pittsburgh, 115 Pa. 4, 7 A. 778; To approve, ratify and confirm. People v. Consolidated Indemnity and Ins. Co., 233 App.Div. 74, 251 N.Y.S. 566, 569. It implies a conscious approval of facts actually known, as distinguished from mere neglect to ascertain facts. White-Wilson-Drew Co. v. Lyon-Ratcliff Co., C.C.A.I11., 268 F. 525, 526. Sometimes it is equivalent to "authorize." Hagerla v. Mississippi River Power Co., D.C.Iowa, 202 F. 776, 783. In the sense of the law is a matter of overt acts, not of inward unanimity in motives, design or the interpretation of words. Triboro Coach Corporation v. New York State Labor Relations Board, 261 App.Div. 636, 27 N.Y.S.2d 83, 85.

"Assent" is an act of understanding, while "consent" is an act of the will or feelings. Klundby v. Hogden, 202 Wis. 438, 232 N.W. 858, 860, 73 A.L.R. 648. It means passivity or submission which does not include consent. Perryman v. State, 63 Ga.App. 819, 12 S.E.2d 388, 390.

Express Assent

That which is openly declared.

Implied Assent

That which is presumed by law.

Mutual Assent

The meeting of the minds of both or all the parties to a contract; the fact that each agrees to all the terms and conditions, in the same sense and with the same meaning as the others. Insurance Co. v. Young, 23 Wall. 107, 23 L.Ed. 152.

ASSERT. To state as true; declare; maintain. To assert against another has probably a *prima facie* meaning of a contradiction of him, but the context or circumstances may show that it connotes a criminatory charge; 7 L.J.Ex. 268.

ASSERTORY COVENANT. One which affirms that a particular state of facts exists; an affirming promise under seal.

ASSERTORY OATH. See Oath.

ASSESS. To ascertain; fix the value of. State ex rel. Ambrose v. Trimble, 304 Mo. 533, 263 S.W. 840, 842. In re Calhoun Beach Holding Co., 205 Minn. 582, 287 N.W. 317, 322. To fix the amount of the damages or the value of the thing to be ascertained. New Orleans Terminal Co. v. Dixie Rendering, La.App., 179 So. 98, 100. To impose a pecuniary payment upon persons or property; People v. Priest, 169 N.Y. 435, 62 N.E. 568. To ascertain, adjust, and settle the respective shares to be contributed by several persons toward an object beneficial to them all, in proportion to the benefit received.

In connection with taxation of property, means to make a valuation and appraisal of property, usually in connection with listing of property liable to taxation, and implies the exercise of discretion on the part of officials charged with duty of assessing, including the listing or inventory of property involved, determination of extent of physical property, and placing of a value thereon. Montana-Dakota Power Co. v. Weeks, D.C.N.D., 8 F.Supp. 935, 936. To tax. Johnson City v. Clinchfield R. Co., 163 Tenn. 332, 43 S.W.2d 386, 387.

To adjust or fix the proportion of a tax which each person, of several liable to it, has to pay; to apportion a tax among several ; to distribute taxation in a proportion founded on the proportion of burden and benefit. Seymour v. Peters, 67 Mich. 415, 35 N.W. 62. To calculate the rate and amount of taxes. Flanigan v. Police Jury of Jackson Parish, 145 La. 613, 82 So. 722, 726.

"Assess" is sometimes used as synonymous with "levy"; Lehigh Valley R. Co. v. State Board of Taxes and Assessment, 101 N.J.Law, 298, 128 A. 432, 433; and is sometimes distinguished therefrom; City of Portland v. Portland Ry. Light & Power Co., 80 Or. 271, 156 P. 1058, 1064.

ASSESSED. Is equivalent to imposed. Town of Brandon v. Harvey, 105 Vt. 435, 168 A. 708, 710. To value or appraise. Abrams v. City and County of San Francisco, 48 Cal.App.2d 1, 119 P.2d 197, 199.

ASSESSED VALUATION. Value on each unit of which a prescribed amount must be paid as property taxes. In re Calhoun Beach Holding Co., 205 Minn. 582, 287 N.W. 317, 322.

ASSESSMENT. In a general sense, the process of ascertaining and adjusting the shares respec-

tively to be contributed by several persons towards a common beneficial object according to the benefit received.

Taxation

The listing and valuation of property for the purpose of apportioning a tax upon it, either according to value alone or in proportion to benefit received. Also determining the share of a tax to be paid by each of many persons; or apportioning the entire tax to be levied among the different taxable persons, establishing the proportion due from each. Town of Albertville v. Hooper, 196 Ala. 642, 72 So. 258. Northwestern Imp. Co. v. Henneford, 184 Wash. 502, 51 P.2d 1083, 1085. Iowa Nat. Bank. v. Stewart, 214 Iowa 1229, 232 N.W. 445, 451. It fixes the liability of the taxpayer and ascertains the facts and furnishes the data for the proper preparation of the tax rolls. Dallas Joint Stock Land Bank of Dallas v. State, Tex.Civ.App., 118 S.W.2d 941, 942.

"Assessment" and "levy" are frequently used interchangeably. Huyler v. Huyler's, 44 N.Y.S.2d 255, 257. Though properly speaking it does not include the levy of taxes. Commissioner of Internal Revenue v. Patrick Cudahy Family Co., C.C.A.7, 102 F.2d 930, 932. Assessment is also popularly used as synonym for taxation in general, the authorative imposition of a rate or duty to be paid, but in its technical signification it is only taxation for a special purpose or local improvement, local taxation, as distinguished from general taxation ; taxation on principle of apportionment according to the relation between burden and benefit; whole taxes are impositions for purpose of general revenue. Collister v. Kovanda, 51 Ohio App. 43, 199 N.E. 477, 478; Home Owners' Loan Corporation v. Tyson, 133 Ohio St. 184, 12 N.E.2d 478, 480; Atlantic Coast Line R. Co. v. Town of Ahoskie, 192 N.C. 258, 134 S.E. 653, 654.

An assessment is doubtless a tax, but the term implies something more; it implies a tax of a particular kind, predicated upon the principle of equivalents, or benefits, which are peculiar to the persons or property charged therewith, and which are said to be assessed or appraised, according to the measure or proportion of such equivalents; whereas a simple tax is imposed for the purpose of supporting the government generally, without reference to any special advantage which may be supposed to accrue to the persons taxed. Taxes must be levied, without discrimination, equally upon all the subjects of property ; whilst assessments are only levied upon lands, or some other specific property, the subjects of the supposed benefits; to repay which the assessment is levied. In re Walker River Irr. Dist., 44 Nev. 321, 195 P. 327, 330.

Corporations

Installments of the money subscribed for shares of stock, called for from the subscribers by the directors, from time to time as the company requires money, are called "assessments," or, in England, "calls." Water Co. v. Superior Court, 92 Cal. 47, 28 Pac. 54, 27 Am.St.Rep. 91; Spangler v. Railroad Co., 21 Ill. 278; Stewart Publishing Co., 1 Wash.St. 521, 20 Pac. 605. While the terms "call" and "assessment" are generally used synonymously, the latter term applies with peculiar aptness to contributions above the par value of stock or the subscription liability of the stockholders; Porter v. Northern Fire & Marine Ins. Co., 36 N.D. 199, 161 N.W. 1012, 1014; whereas "call" or "installments" means action of the board of directors demanding payment of all or portion of unpaid subscriptions; Seyberth v. American Commander Min. & Mill. Co., 42 Idaho, 254, 245 P. 392, 395.

It has been said, however, that the superadded liability of stockholders to creditors, is not in a true sense an "assessment," but is a "statutory liability." Leach v. Arthur Say. Bank, 203 Iowa, 1052, 213 N.W. 772, 773.

Damages

Fixing the amount of damages to which the successful party in a suit is entitled after an interlocutory judgment has been taken; also the name given to the determination of the sum which a corporation proposing to take lands for a public use must pay 4satisfaction of the demand proved or the value taken.

Insurance

An apportionment made in general average upon the various articles and interests at risk, according to their value at the time and place of being in safety, for contribution for damage and sacrifices purposely made, and expenses incurred for escape from impending common peril. 2 Phil. Ins. c. xv.

A sum specially levied in mutual benefit insurance upon a fixed and definite plan within the limit of the company's or society's fundamental law of organization to pay losses, or losses and expenses incurred, being to a certain degree substantially the equivalent of premiums. Beaver State Merchants' Mut. Fire Ins. Ass'n v. Smith, 97 Or. 579, 192 P. 798, 800. The periodical demands made by a mutual insurance company, under its charter and by-laws, upon the makers of premium notes, are also denominated "assessments." Hill v. Insurance Co., 129 Mich. 141, 88 N.W. 392. Meaning "premiums," Ancient Order of United Workmen of Kansas v. Hobbs, 136 Kan. 708, 18 P.2d 561, 562; and being the consideration for the insurance contracts. Downing v. School Dist. of City of Erie, 297 Pa. 474, 147 A. 239, 240.

Mining

"Assessment" as applied to labor on mining claims is universally understood to mean the annual labor required by Rev.St.U.S. § 2324 (30 U.S. C.A. § 28), in order to hold the right to the possession of the claim after a discovery and complete location has been made. Smith v. Union Oil Co., 166 Cal. 217, 135 P. 966, 969. See Assessment Work.

ASSESSMENT ASSOCIATION. This term, as defined by the Nebraska insurance laws, does not include an insurance company which requires the payment of a fixed premium in advance and provides benefits not in any degree dependent upon the collection of assessments from other members, and which does not provide for the levying of extra assessments, if necessary. Western Life & Accident Co. of Colorado v. State Ins. Board of Nebraska, 101 Neb. 152, 162 N.W. 530.

ASSESSMENT COMPANY. In life insurance. A company in which a death loss is met by levy-

ing an assessment on the surviving members of the association. National Ben. Ass'n v. Clay, 162 Ky. 409, 172 S.W. 922, 923.

ASSESSMENT CONTRACT. One wherein the payment of the benefit is in any manner or degree dependent on the collection of an assessment levied on persons holding similar contracts. Folkens v. Insurance Co., 98 Mo.App. 480, 72 S.W. 720.

ASSESSMENT DISTRICT. In taxation. Any subdivision of territory, whether the whole or part of any municipality, in which by law a separate assessment of taxable property is made by the officers elected or appointed therefor. Rev. Stat.Wis.1898, § 1031 (St.1931, § 70.04).

ASSESSMENT FOR BENEFITS. A burden levied under the power of taxation. Jackson v. City of Lake Worth, 156 Fla. 452, 23 So.2d 526, 528.

See Tax. Cooper Union for Advancement of Science and Art v. City of New York, 272 App. Div. 438, 71 N.Y.S.2d 204, 207.

ASSESSMENT FUND. The assessment fund of a mutual benefit association is the balance of the assessments, less expenses, out of which beneficiaries are paid. Kerr v. Ben. Ass'n, 39 Minn. 174, 39 N.W. 312, 12 Am.St.Rep. 631.

ASSESSMENT INSURANCE. Exists when benefit to be paid is dependent upon collection of such assessments as may be necessary for paying the amounts to insured. Keen v. Bankers Mut. Life Co., 230 Mo.App. 1072, 93 S.W.2d 85, 90.

ASSESSMENT LABOR. These words in Act Feb. 12, 1903 (30 U.S.C.A. § 102), providing that such labor on oil claims may be done on one of a group of contiguous claims refers to the annual labor required of the locator of a mineral claim after discovery by Rev.St. § 2324 (30 U.S.C.A. § 28), and not to work before discovery. Union Oil Co. of California v. Smith, 39 S.Ct. 308, 311, 249 U.S. 337, 63 L.Ed. 635. See Assessment, under the heading "In Mining."

ASSESSMENT LIST. The list furnished by the assessor to the board of equalization. Adsit v. Park, 144 La. 934, 81 So. 430, 434.

ASSESSMENT PERIOD. Means taxable period. Johnson City v. Clinchfield R. Co., 163 Tenn. 332, 43 S.W.2d 386, 387.

ASSESSMENT ROLL. In taxation. The list or roll of taxable persons and property, completed, verified, and deposited by the assessors, not as it appears after review and equalization. Brady v. Weissenstein, 260 Mich. 678, 245 N.W. 798, 799.

ASSESSMENT WORK.. Under the mining laws of the United States, the holder of an unpatented mining claim on the public domain is required, in order to hold his claim, to do labor or make improvements upon it to the extent of at least one hundred dollars in each year.. Rev.St.U.S. § 2324 (30 U.S.C.A. § 28). This is commonly called by miners "doing assessment work."

ASSESSOR. An officer chosen or appointed to appraise, value, or assess property.

The assessing power, and not merely the county assessor. Board of Com'rs of San Miguel County v. Floaten, 66 Colo. 540, 181 P. 122.

A person learned in some particular science of industry, who sits with the judge on the trial of a cause requiring such special knowledge and gives his advice.

In England it is the practice in admiralty business to call in assessors, in cases involving questions of navigation or seamanship. They are called "nautical assessors" *(q. v.),* and are always Brethren of the Trinity House.

### Civil and Scotch Law

Persons skilled in law, selected to advise the judges of the inferior courts. Bell; Dig. 1, 22; Cod. 1, 51.

ASSETS. The word, though more generally used to denote everything which comes to the representatives of a deceased person, yet is by no means confined to that use, but has come to signify everything which can be made available for the payment of debts, whether belonging to the estate of a deceased person or not. Hence we speak of the assets of a bank or other monied corporation, the assets of an insolvent debtor, and the assets of an individual or private copartnership; and we always use this word when we speak of the means which a party has, as compared with his liabilities or debts. Pelican v. Rock Falls, 81 Wis. 428, 51 N.W. 871.

### Bankruptcy

The property or effects of a bankrupt or insolvent, applicable to the payment of his debts.

The term "assets" includes all property of every kind and nature, chargeable with the debts of the bankrupt, that comes into the hands of and under the control of the signee; and the value thereof is not to be considered a less sum than that actually realized out of said property, and received by the assignee for it. In re Taggert, 16 N. B. R. 351, Fed. Cas. No. 13, 725 ; Progressive Building & Loan Co. v. Hall, C.C.A.Va., 220 F. 45, 46.

### Commercial Law

The aggregate of available property, stock in trade, cash, etc., belonging to a merchant or mercantile company.

The term "assets," as applied to a bank, is broad enough to cover anything which is or may be available to pay creditors; but, as usually understood, it refers to the tangible property of the corporation, and not to the liability of stockholders contingent upon insolvency. Hill v. Smathers, 173 N.C. 642, 92 S.E. 607, 609; Deariso v. Mobley, 38 Ga.App. 313, 143 S.E. 915, 920. But when the individual liability of stockholders has been enforced by the superintendent of banks, funds collected by him thereunder are "assets." Bennett v. Wilkes County, 164 Ga. 790, 139 S.E. 566, 568.

But on other hand stockholders' voluntary assessment to relieve bank or for betterment of stock. Thomson v. Holt, 345 Mo. 296, 132 S.W.2d 974, 977; bank stockholders' ha. bility, Farmers & Merchants Bank of Morgantown v. Bank of Masontown, 123 W.Va. 451, 15 S.E.2d 569, 572; and bank directors' contribution to special bond account to make good shrinkage in regular bond were held to be assets. Asher v. West End Bank, 345 Mo. 89, 131 S.W.2d 549, 551.

Probate Law

Property of a decedent available for the payment of debts and legacies; the estate coming to the heir or personal representative which is chargeable, in law or equity, with the obligations which such heir or representative is required, in his representative capacity, to discharge.

In an accurate and legal sense, all the personal property of the deceased which is of a salable nature. and may be converted into ready money, is deemed *assets.* But the word is not confined to such property; for all other property of the deceased, real or personal, tangible or intangible, legal or equitable, which can be made available for or can be appropriated to payment of debts, is, in a large sense, assets. Trust Co. v. Earle, 110 U.S. 710, 4 Sup.Ct. 231, 28 L.Ed. 30; Condo v. Barbour, 101 Ind.App. 483, 200 N.E. 76; Tapp v. Stuart, D.C.Okl., 6 F.Supp. 577, 578.

General

—Assets entre mains. L. Fr. Assets in hand; assets in the hands of executors or administrators, applicable for the payment of debts. Termes de la Ley; 2 Bl.Comm. 510; 1 Crabb, Real Prop. Ti; Favorite v. Booher, 17 Ohio St. 557.

—Assets per descent. That portion of the ancestor's estate which descends to the heir, and which is sufficient to charge him, as far as it goes, with the specialty debts of his ancestors. 2 Williams, Ex'rs, 1011.

—Equitable assets. Equitable assets are all assets which are chargeable with the payment of debts or legacies in equity, and which do not fall under the description of legal assets. 1 Story, Eq.Jur. § 552. Those portions of the property which by the ordinary rules of law are exempt from debts, but which the testator has voluntarily charged as assets, or which, being non-existent at law, have been created in equity. Adams, Eq. 254, et seq.

They are so called because they can be reached only by the aid and instrumentality of a court of equity, and because their distribution is governed by a different rule from that which governs the distribution of legal assets. 2 Fonbl. Eq. b. 4, pt. 2, c. 2, § 1, and notes; Story, Eq. Jur. § 552.

—Legal assets. See Legal Assets.

—Personal assets. Chattels, money, and other personal property belonging to a bankrupt, insolvent, or decedent estate, which go to the assignee or executor.

—Quick assets. This term was used in a corporation credit statement merely to distinguish liquid assets from those permanently invested in the business, like *real* estate and machinery, and included amounts charged against officers for return of part of salaries paid them in a previous year, in accordance with the agreement of employment. In re American Knit Goods Mfg. Co., C.C.A.N.Y., 173 F. 480, 97 C.C.A. 486.

—Real assets. Lands or real estate in the hands of an heir, chargeable with the payment of the debts of the ancestor. 2 Bl.Comm. 244, 302.

ASSEVERATION. An affirmation; a positive assertion; a solemn declaration. This word is seldom, if ever, used for a declaration made under oath, but denotes a declaration accompanied with solemnity or an appeal to conscience, whereas by an oath one appeals to God as a witness of the truth of what one says.

ASSEWIARE. To draw or drain water from marsh grounds. Cowell.

ASSIGN, v. To make over or set over to .another. North Tex. Nat. Bank v. Thompson, Tex.Civ.App., 23 S.W.2d 494, 499. To appoint, allot, select, or designate for a particular purpose, or duty.

Thus, in England, justices are said to be *"assigned* to take the assises," *"assigned* to hold pleas," *"assigned to* make gaol delivery," *"assigned* to keep the peace," etc. St. Westm. 2, c. 30; Reg. Orig. 68, 69; 3 Bl.Comm. 58, 59, 353; 1 Bl. Comm. 351.

To transfer persons, as a sheriff is said to assign prisoners in his custody.

Conveyancing

To transfer; as to assign property, or some interest therein. Cowell; 2 Bl.Comm. 326; North Texas Nat. Bank v. Thompson, Tex.Civ.App., 23 S.W.2d 494, 499; To transfer the title or ownership, as of choses in action. Burkett v. Doty, 176 Cal. 89, 167 P. 518, 520.

Practice

To point at, or point out; to set forth, or specify; to mark out or designate; to particularize; as to *assign errors* on a writ of error; to *assign breaches* of a covenant. 2 Tidd, Pr. 1168; 1 Tidd, 686; Commercial Standard Ins. Co. v. Noack, Tex. Civ.App., 45 S.W.2d 798, 801.

ASSIGNABILITY. "Survivability" convertible term. People ex rel. Rude v. La Salle County, 310 Ill.App. 541, 34 N.E.2d 865, 867. City of Milwaukee v. Boynton Cab Co., 201 Wis. 581, 231 N.W. 597, 598.

ASSIGNABLE. That may be assigned or transferred; transferable; negotiable, as a bill of exchange. Comb. 176; Story, Bills, § 17.

ASSIGNATION. In French law. A writ of summons.

In Scotch law. A term equivalent to assignment.

ASSIGNATION HOUSE. A bawdyhouse. State v. Bragg, Mo.App., 220 S.W. 25, 26. See, also, People v. Arcega, 49 Cal.App. 239, 193 P. 264, 266. A house resorted to for prostitution. State v. Hesselmeyer, 343 Mo. 797, 123 S.W.2d 90, 99.

ASSIGNATUS UTITUR JURE AUCTORIS. An. assignee uses the right of his principal; an assignee is clothed with the rights of his principal.. Wing.Max. 56; 1 Exch. 32; 18 Q.B. 878.

ASSIGNAY. In Scotch law. An assignee.

ASSIGNEE. A person to whom an assignment is made; grantee. Nolan v. City of New York, 39 N.Y.S.2d 360, 363, 179 Misc. 1011. Ely v. Com'rs, 49 Mich. 17, 12 N.W. 893, 13 N.W. 784. The term

is commonly used in reference to personal property; but it is not incorrect, in some cases, to apply it to realty, *e. g.,* "assignee of the reversion."

*Assignee in fact* is one to whom an assignment has- been made in fact by the party having the right. Tucker v. West, 31 Ark. 643. One to whom an assignment has been made. Michigan Trust Co. v. Chaffee, D.C.N.D., 44 F.Supp. 848, 850.

*Assignee in law* is one in whom the law vests the right; as an executor or administrator.

Old Law

A person deputed or appointed by another to do any act, or perform any business. Blount. An *assignee,* however, was distinguished from a *deputy,* being said to occupy a thing in his own right, while a deputy acted in right of another. Cowell.

ASSIGNEE FOR THE BENEFIT OF CREDITORS. One to whom, under an insolvent or bankrupt law, the whole estate of a debtor is transferred to be administered for the benefit of creditors; he is a trustee for the creditors who stands in the shoes of an assignor, and can assert no claim to property which assignor could not. Slater v. Oriental Mills, 18 R.I. 352, 27 A. 443, 444; Textor v. Orr, 86 Md. 392, 38 A. 939, 940.

ASSIGNMENT. A transfer or making over to another of the whole of any property, real or personal, in possession or in action, or of any estate or right therein. Bostrom v. Bostrom, 60 N.D. 792, 236 N.W. 732, 734. It includes transfers of all kinds of property, Higgins v. Monckton, 28 Cal.App.2d 723, 83 P.2d 516, 519. But is ordinarily limited to transfers of choses in action and to rights in or connected with property, as distinguished from the particular item of property. In re Beffa's Estate, 54 Cal.App. 186, 201 P. 616, 617. It is generally appropriate to the transfer of equitable interests. Kavanaugh v. Cohoes Power & Light Corporation, 187 N.Y.S. 216, 228, 114 Misc. 590.

To constitute valid "assignment," there must be perfected transaction between parties intended to vest in assignee present right in thing assigned. In re Lynch's Estate, 272 N.Y.S. 79, 85, 151 Misc. 549. It is contract, and is subject to same requisites as to validity as other contracts, such as proper parties, mutual assent, consideration, and legal subject-matter. Hutsell v. Citizens' Nat. Bank, 166 Tenn. 598, 64 S.W.2d 188.

The transfer of the interest one has in *lands* and *tenements;* more particularly applied to the unexpired residue of a term or estate for life or years; Cruise, Dig. tit. xxxii. (Deed) c. vii, § 15; 1 Steph.Com. 507.

The distinction between an "assignment" and a "sublease" is that an assignment transfers the entire unexpired term. Sandford v. Ambassador Restaurant Co., 247 N.Y.S. 655, 657, 139 Misc. 3.

The deed by which the transfer is made. Humphrey v. Coquillard Wagon Works, 37 Okl. 714, 132 P. 899, 902, 49 L.R.A.,N.S., 600.

A transfer of the title to a bill, note, or check.

An assignment at common law differs from an indorsement in that by an assignment the assignor passed title to the assignee but did not subject himself to any contractual liability, whereas an indorser, in addition to passing title, impliedly contracts to pay note at maturity on demand and notice on maker's failure to so do. Johnson v. Beickey, 64 Utah, 43, 228 P. 189, 191.

In patent law, the transfer of the entire interest in a patented invention or of an undivided portion of such entire interest as to every section of the United States. Rob.Pat. § 762. It differs from grant in relation to the territorial area to which they relate. A grant is the transfer of the exclusive right in a specific part of the United States. It is an exclusive sectional right. A license is a transfer of a less or different interest than either the interest in a whole patent or an undivided part of such whole interest or an exclusive sectional interest. Littlefield v. *Perry,* 21 Wall. 205, 22 L.Ed. 577.

A license is distinguished from an assignment and a grant in that the latter transfers the monopoly as well as the invention, while a license transfers only the invention and does not affect the monopoly otherwise than by estopping the licensor from exercising his prohibitory powers in derogation of the privileges conferred by him upon the licensee. Rob. Pat. § 806. See Pope Mfg. Co. v. Mfg. Co., 144 U.S. 248, 12 S.Ct. 641, 36 L.Ed. 423.

—Assignment for benefit of creditors. An assignment in trust made by insolvent and other debtors for the payment of their debts. These are usually regulated by state statutes. Woodard v. Morrissey, 115 Kan. 511, 223 P. 306, 307.

The distinctive test between an "assignment" and a sale, where another creditor is to be paid off, is that in the former case such other creditor is to receive some of the property or its proceeds, and in the latter the creditor to whom title is passed takes for himself the whole property, stipulating to pay the other creditor out of his own means and not out of the property or its proceeds. Silver & Goldstein v. Chapman, 163 Ga. 604, 136 S.E. 914, 919.

—Assignment of account. Transfer to assignee giving him a right to have moneys when collected applied to payment of his debt. Nanny v. H. E. Pogue Distillery Co., 56 Cal.App.2d 817, 133 P.2d 686, 688.

—Assignment of dower. The act by which the share of a widow in her deceased husband's real estate is ascertained and set apart to her. Bettis v. McNider, 137 Ala. 588, 34 So. 813, 97 Am.St.Rep. 59.

—Assignment of error. See Error.

—Assignment pro tanto. Where an order *is* drawn upon a third party and made payable out of a particular fund then due or to become due to the drawer, the delivery of the order to the payee operates as an assignment pro tanto of the fund. Doyle v. East New York Say. Bank, 44 N.Y.S.2d 318, 323.

Under Mechanics' Lien Law a workman or materialman who serves on owner a stop notice becomes an assignee pro tanto of debt due from owner to contractor. Commonwealth Roofing Co. v. Riccio, 81 N.J.Eq. 486, 87 A. 114, 115.

Check drawn on a bank operates as an assignment pro tanto of depositor's funds in favor of holder. Nat. Bank of America v. Indiana Banking Co., 114 Ill. 483, 2 N.E. 401.

—Assignment with preferences. An assignment for the benefit of creditors, with directions to the

assignee to prefer a specified creditor or class of creditors, by paying their claims in full before the others receive any dividend, or in some other manner. More usually termed a "preferential assignment."

—Foreign assignment. An assignment made in a foreign country, or in another state. 2 Kent, Comm. 405, *et seq.*

—General assignment. An assignment made for the benefit of *all* the assignor's creditors, instead of a few only; or one which transfers the *whole* of his estate to the assignee, instead of a part only. Royer Wheel Co. v. Fielding, 101 N.Y. 504, 5 N.E. 431.

—Voluntary assignment. An assignment for the benefit of his creditors made by a debtor voluntarily; as distinguished from a compulsory assignment which takes place by operation of law in proceedings in bankruptcy or insolvency. Presumably it means an assignment of a debtor's property in trust to pay his debts generally, in distinction from a transfer of property to a particular creditor in payment of his demand, or to a conveyance by way of collateral security or mortgage. Dias v. Bouchaud, 10 Paige (N.Y.) 445.

ASSIGNOR. A person who assigns a right, whether or not he is the original owner thereof. Restatement, Contracts, § 149(2).

ASSIGNS. Assignees; those to whom property shall have been transferred. Now seldom used except in the phrase, in deeds, "heirs, administrators, and assigns." Stannard v. Marboe, 159 Minn. 119, 198 N.W. 127. It generally comprehends all those who take either immediately or remotely from or under the assignor, whether by conveyance, devise, descent, or act of law. Ferrell v. Deverick, 100 S.E. 850, 853, 85 W.Va. 1.

ASSISA. In old English and Scotch law. An assise; a kind of jury or inquest; a writ; a sitting of a court; an ordinance or statute; a fixed or specific time, number, quantity, quality, price, or weight; a tribute, fine, or tax; a real action; the name of a writ. See Assise.

ASSISA ARMORUM. Assise of arms. A statute or ordinance requiring the keeping of arms for the common defense. Hale, Com.Law, c. 11.

ASSISA CADERE. To fail in the assise; *e.,* to be nonsuited. Cowell; 3 Bl.Comm. 402.

ASSISA CADIT IN JURATUM. The assise falls (turns) into a jury; hence to submit a controversy to trial by jury.

ASSISA CONTINUANDA. An ancient writ addressed to the justices of assise for the continuation of a cause, when certain facts put in issue could not have been proved in time by the party alleging them. Reg.Orig. 217.

ASSISA DE CLARENDON. The assise of Clarendon. A statute or ordinance passed in the tenth year of Henry II., by which those that were accused of any heinous crime, and not able to purge themselves, .but must abjure the realm, had liberty of forty days to stay and try what succor they could get of their friends towards their sustenance in exile. Bract. fol. 136; Co.Litt. 159a; Cowell.

ASSISA DE FORESTA. Assise of the forest; a statute concerning orders to be observed in the royal forests.

ASSISA DE MENSURIS. Assise of measures. A. common rule for weights and measures, established throughout England by Richard I., in the eighth year of his reign. Hale, Com.Law, c. 7.

ASSISA DE NOCUMENTO. An assise of nuisance; a writ to abate or redress a nuisance.

ASSISA DE UTRUM. An obsolete writ, which lay for the parson of a church whose predecessor had alienated the land and rents of it.

ASSISA FRISCZE FORTIJE. Assise of fresh force, which see.

ASSISA MORTIS D'ANCESTORIS. Assise of mort d'ancestor, which see.

ASSISA NOVAE DISSEYSINAE. Assise of novel disseisin, which see.

ASSISA PANIS ET CEREVISLE. Assise of bread and ale, or beer. The name of a statute passed in the fifty-first year of Henry III., containing regulations for the sale of bread and ale; sometimes called the "statute of bread and ale." Co.Litt. 159b; 2 Reeve, Hist.Eng.Law, 56; Cowell; Bract. fol. 155.

ASSISA PROROGANDA. An obsolete writ, which was directed to the judges assigned to take assises, to stay proceedings, by reason of a party to them being employed in the king's business. Reg.Orig. 208.

ASSISA ULTDLE PRIESENTATIONIS. Assise of darrein presentment, (q. v.).

ASSISA VENALIUM. The assise of salable commodities, or of things exposed for sale.

ASSISE, or ASSIZE. An ancient species of court, consisting of a certain number of men, usually twelve, who were summoned together to try a disputed cause, performing the functions of a jury, except that they gave a verdict from their own investigation and knowledge and not upon evidence adduced. From the fact that they sat together, *(assideo,)* they were called the "assise." See Bract. 4, 1, 6; Co.Litt. 153b, 159b. A court composed of an assembly of knights and other substantial men, with the . baron or justice, in a certain place, at an appointed time. Grand Cou. cc. 24, 25.

The verdict or judgment of the jurors or recognitors of assise. 3 Bl.Comm. 57, 59.

In modern English law, the name "assises" or "assizes" is given to the court, time, or place where the judges of assise and *nisi pries,* who are sent by special commission from the crown on circuits through the kingdom, proceed to take indictments, and to try such disputed causes issu-

ing out of the courts at Westminster as are then ready for trial, with the assistance of a jury from the particular county; the regular sessions of the judges at *nisi Arius.*

Anything reduced to a certainty in respect to time, number, quantity, quality, weight, measure, etc. Spelman.

An ordinance, statute, or regulation. Spelman gives this meaning of the word the first place among his definitions, observing that *statutes* were in England called "assises" down to the reign of Henry III.

A species of writ, or real action, said to have been invented by Glanville, chief justice to Henry II., and having for its object to determine the right of possession of lands, and to recover the possession. 3 Bl.Comm. 184, 185.

The whole proceedings in court upon a writ of assise. Co.Litt. 159b. The verdict or finding of the jury upon such a writ. 3 Bl.Comm. 57.

—Assise of Clarendon. See Assisa.

—Assise of darrein presentment. A writ of assise which formerly lay when a man or his ancestors under whom he claimed presented a clerk to a benefice, who was instituted, and afterwards, upon the next avoidance, a stranger presented a clerk and thereby disturbed the real patron. 3 Bl.Comm. 245; St. 13 Edw. I. (Westm. 2) c. 5. It has given way to the remedy by *quare impedit.*

—Assise of fresh force. In old English practice. A writ which lay by the usage and custom of a city or borough, where a man was disseised of his lands and tenements in such city or borough. It was called "fresh force," because it was to be sued within forty days after the party's title accrued to him. Fitzh.Nat.Brev. 7 C.

—Assise of mort d'ancestor. A real action which lay to recover land of which a person had been deprived on the death of his ancestor by the abatement or intrusion of a stranger. 3 Bl.Comm. 185; Co.Litt. 159a. It was abolished by St. 3 & 4 Wm. IV, c. 27.

—Assise of Northhampton. A re-enactment and enlargement (1176) of the Assise of Clarendon. 1 Holdsw.Hist.E.L. 21.

—Assise of novel disseisin. A writ of assise which lay for the recovery of lands or tenements, where the claimant had been lately disseised.

—Assise of nuisance. A writ of assise which lay where a nuisance had been committed to the complainant's freehold; either for abatement of the nuisance or for damages.

—Assise of the forest. A statute touching orders to be observed in the king's forests. Manwood, 35.

—Assise of utrum. A writ of assise which lay for a parson to recover lands which his predecessor had improperly allowed the church to be deprived of. 3 Bla.Com. 257.

An assise for the trial of the question of whether land is a lay fee, or held in frankalmoigne. 1 Holdsw.Hist.E.L. 21.

—Assise rents. The certain established rents of the freeholders and ancient copyholders of a manor; so called because they are *assised,* or made precise and certain.

—Grand assize. A peculiar species of trial by jury, introduced in the time of Henry II., giving the tenant or defendant in a writ of right the alternative of a trial by battel, or by his peers. Abolished by 3 & 4 Wm. IV, c. 42, § 13. See 3 Bl. Comm. 341. See Battel.

ASSISER. An assessor; juror; an officer who has the care and oversight of weights and measures.

ASSISORS. In Scotch law. Jurors; the persons who formed that kind of court which in Scotland was called an "assise," for the purpose of inquiring into and judging divers civil causes, such as perambulations, cognitions, molestations, purprestures, and other matters; like jurors in England. Holthouse.

ASSIST. To help; aid; succor; lend countenance or encouragement to; participate in as an auxiliary. People v. Hayne, 83 Cal. 111, 23 Pac. 1, 7 L.R.A. 348, 17 Am.St.Rep. 211. To contribute effort in the complete accomplishment of an ultimate purpose intended to be effected by those engaged. People v. Thurman, 62 Cal.App. 147, 216 P. 394, 395.

ASSISTANCE. Imports voluntary participation in wrongful acts of promotors. Peterson v. Hopson, 29 N.E.2d 140, 148, 306 Mass. 597.

ASSISTANCE, or (ASSISTANTS) COURT OF. See Court of Assistants.

ASSISTANCE OF COUNSEL. Sixth Amendment to Federal Constitution, guaranteeing accused in criminal prosecution "assistance of counsel" for his defense, means effective assistance. U.S.C.A. Const. Amend. 6. Thomas v. District of Columbia, 90 F.2d 424, 428, 67 App.D.C. 179. As distinguished from bad faith, sham, mere pretense or want of opportunity for conferences and preparation. Beckett v. Hudspeth, C.C.A.Kan., 131 F.2d 195, 196.

ASSISTANCE, WRIT OF. See Writ of Assistance.

ASSISTANT. A deputy, agent, or employee; as, an assistant assessor. Pryor Brown Transfer Co. v. Gibson, 154 Tenn. 260, 290 S.W. 33, 35, 51 A.L.R. 193. One who stands by and aids or helps another, and is not an agent. Wells-Dickey Co. v. Embody, 82 Mont. 150, 266 P. 869, 874. Ordinarily refers to employee whose duties are to help his superior, to whom he must look for authority to act. State ex rel. Dunn v. Ayers, 112 Mont. 120, 113 P. 2d 785, 788.

ASSISTANT JUDGE. A judge of the English court of general or quarter sessions in Middlesex. He differs from the other justices in being a bar-

rister of ten years' standing, and in being salaried. St. 7 & 8 Vict. c. 71; 22 & 23 Vict. c. 4; Pritch. Quar.Sess. 31.

ASSISTANT TEACHER. An "assistant teacher," meaning a classroom teacher of a subject, is not a "laboratory assistant," meaning a helper of a teacher who does no teaching. People ex rel. Becker v. Board of Education of City of New York, Sup., 162 N.Y.S. 643, 648.

ASSISUS. Rented or farmed out for a specified assise; that is, a payment of a certain assessed rent in money or provisions.

ASSITHMENT. Weregild *(q. v.)* or compensation by a pecuniary mulct. Cowell.

ASSIZE. In the practice of the criminal courts of Scotland, the fifteen men who decide on the conviction or acquittal of an accused person are called the "assize," though in popular language, and even in statutes, they are called the "jury." Wharton. See Assise.

ASSIZES. Sessions of the justices or commissioners of assize. These assizes are held twice in each year in each of the various shires of England, with some exceptions, for the trial of matters of fact in issue in both civil and criminal cases. They still retain the ancient name in popular language, though the commission of assize is no longer issued. See Assise.

ASSIZES DE JERUSALEM. A code of feudal jurisprudence prepared by an assembly of barons and lords A. D. 1099, after the conquest of Jerusalem. It was compiled principally from the laws and customs of France.

ASSOCIATE. Signifies confederacy or union for a particular purpose, good or ill. Weir v. United States, C.C.A.Ind., 92 F.2d 634, 638, 114 A.L.R. 481; Means "also". Smith v. Maine, 260 N.Y.S. 409, 145 Misc. 521.

An officer in each of the English courts of common law, appointed by the chief judge of the court, and holding his office during good behavior, whose duties were to superintend the entry of causes, to attend the sittings of *nisi prius,* and there receive and enter verdicts, and to draw up the posteas and any orders of *nisi prius.* The associates are now officers of the Supreme Court of Judicature, and are styled "Masters of the Supreme Court." Wharton.

A person associated with the judges and clerk of assise in the commission of general jail delivery. Mozley & Whitley.

The term is frequently used of the judges of appellate courts, other than the presiding judge or chief justice.

ASSOCIATES IN OFFICE. "Associates in office" are those who are united in action; who have a common purpose; who share the responsibility or authority and among whom is reasonable equality; those who are authorized by law to perform the duties jointly or as a body. Barton v. Alexander, 27 Idaho 286, 148 P. 471, 474, Ann.Cas. 1917D, 729,

ASSOCIATION. The act of a number of persons in uniting together for some special purpose or business. The persons so joining. It is a word of vague meaning used to indicate a collection of persons who have joined together for a certain object. U. S. v. Martindale, D.C.Kan., 146 F. 280, 284; In. re Sautter's Estate, 142 Neb. 42, 5 N.W.2d 263, 268; W. R. Roach & Co. v. Harding, 348 Ill. 454, 181 N.E. 331, 336. An unincorporated society; a body of persons united and acting together without a charter, but upon the methods and forms used by incorporated bodies for the prosecution of some common enterprise. Clark v. Grand Lodge of Brotherhood of Railroad Trainmen, 328 Mo. 1084, 43 S.W.2d 404, 408. It is not a legal entity separate from the persons who compose it. Meinhart v. Contresta, Sup., 194 N.Y.S. 593, 594.

A confederacy or union for particular purposes, good or ill. Johnson's Dict.

In that sense "association" is a generic term and indifferently comprehend a voluntary confederacy, whici- is a partnership dissoluble by the persons who formed it or a corporate confederacy, deriving its existence from confederacy, and dissoluble only by the law." Campbell v. Floyd, 153 Pa. 84, 25 A. 1033, 1036.

A body of persons invested with some, yet not full, con porate rights and powers, but will not include the state State v. Taylor, 7 S.D. 533, 64 N.W. 548.

"Association" and "society" are convertible terms Kribs v. United Order of Foresters, 191 Mo.App. 524, 17' S.W. 766, 769. Also often used as synonymous with "corn pany". Law v. Crist, 41 Cal.App.2d 862, 107 P.2d 953, 955.

It is fundamentally a large partnership, from which i differs, in that it is not bound by the acts of the individ ual partners, but only by those of its manager or trustee and that shares in it are transferable, and that it is no dissolved by the retirement, death, or bankruptcy of it, individual members. In re Lloyds of Texas, D.C.Tex., 4: F.2d 383, 385.

A "business trust" is an "association" when it has continuing entity throughout trust period, centralize( management, continuity of trust uninterrupted by deatl among beneficial owners, means for transfer of beneficia interests, and limitation of personal liabilities of partici pants to property embarked in undertaking. Fletcher v Clark, D.C.Wyo., 57 F.Supp. 479, 480.

"Association" has been held to include a common-la% business or Massachusetts trust. Tracy v. Banker, 17 Mass. 266, 49 N.E. 308, 39 L.R.A. 508.

Articles of association. See Articles.

English Law

A writ directing certain persons (usually the clerk and his subordinate officers) to associate themselves with the justices and sergeants for th, purpose of taking the assizes. 3 Bla.Comm. 59.

National Banking Associations

The statutory title of corporations organize( for the purpose of carrying on the business o banking under the laws of the United State:. Rev.St.U.S. § 5133 (12 USCA § 21).

ASSOCIE EN NOM. In French law. In a *societ en commanditd* an *associd en nom* is one who i liable for the engagements of the undertaking t the whole extent of his properly. This expressio: arises from the fact that the names of the *associd*

so liable figure in the firm-name or form part of the *sociêtó en i.nom collectif.* Arg.Fr.Merc.Law, 546.

ASSOIL. (Spelled also *assoile, absoile, assoilyie.)* To absolve; acquit; to set free; to deliver from excommunication. St. 1 Hen. IV, c. 7; Cowell.

ASSOILZIE. In Scotch law. To acquit the defendant in an action; to find a criminal not guilty.

ASSUME. To pretend. To undertake; engage; promise. 1 Ld.Raym. 122; 4 Coke, 92; Hopkins v. Erskine, 118 Me. 276, 107 A. 829, 830. To take to or upon one's self. Springer v. De Wolf, 194 Ill. 218, 62 N.E. 542, 56 L.R.A. 465, 88 Am.St.Rep. 155; Anicker v. Doyle, 84 Okl. 62, 202 P. 281, 284; Bell Telephone Co. of Pennsylvania v. Public Service Commission of Pennsylvania, 119 Pa.Super. 292, 181 A. 73, 74. Also taking up, receiving, adopting, taking to oneself, or to put on deceitfully, take appearance of, affect, or outwardly seem. Nickell v. State, 205 Wis. 614, 238 N.W. 508, 510. To take on, become bound as another is bound, or put oneself in place of another as to an obligation or liability. Texas Employers' Ins. Ass'n v. Texas & P. Ry. Co., Tex.Civ.App., 129 S.W.2d 746, 749.

ASSUMED RISK. See Assumption of Risk.

ASSUMPSIT. Lat. He undertook; he promised.

A promise or engagement by which one person assumes or undertakes to do some act or pay something to another. It may be either oral or in writing, but is not under seal. It is *express* if the promisor puts his engagement in distinct and definite language; it is *implied* where the law infers a promise (though no formal one has passed) from the conduct of the party or the circumstances of the case. Dukes v. Rogers, 67 Ga. App. 661, 21 S.E.2d 295, 297.

Practice

A form of action which lies for the recovery of damages for the non-performance of a parol or simple contract; or a contract that is neither of record nor under seal. 7 Term. 351; Ballard v. Walker, 3 Johns. Cas. (N.Y.) 60. A liberal and equitable action, applicable to almost every case where money has been received which in equity and good conscience ought to be refunded; express promise is not necessary to sustain action, but it may be maintained whenever anything is received or done from the circumstances of which the law implies a promise of compensation. Armour & Co. v. Whitney & Kemmerer, Inc., 164 Va. 12, 178 S.E. 889, 98 A.L.R. 596.

Express assumpsit. See Express Assumpsit

Special assumpsit is an action of assumpsit brought upon an express contract or promise.

General (common or indebitatus) assumpsit is an action of assumpsit brought upon the promise or contract implied by law in certain cases. It is founded upon what the law terms an implied promise on the part of defendant to pay what, in good conscience, he is bound to pay to plaintiff. Tr. and Ha. Pr. 1490; Ruse v. Williams, 14 Ariz 445, 130 P. 887, 888, 45 L.R.A.,N.S., 923.

The action of *assumpsit* differs from *trespass* and *trover,* which are founded on a tort, not upon a contract; from *covenant* and *debt,* which are appropriate where the ground of recovery is a sealed instrument, or special obligation to pay a fixed sum; and from replevin which seeks the recovery of specific property, if attainable, rather than of damages.

ASSUMPSIT FOR MONEY HAD AND RECEIVED. Is of equitable character and lies, in general, whenever defendant has received money which in equity and good conscience he ought to pay to plaintiff. Henderson v. Koenig, 192 Mo. 690, 91 S.W. 88, 91.

ASSUMPSIT ON QUANTUM MERUIT. When a person employs another to do work for him, without any agreement as to his compensation, the law implies a promise from the employer to the workman that he will pay him for his services as much as he may deserve or merit. In such case, the plaintiff may suggest in his declaration that the defendant promised to pay him as much as he reasonably deserved, and then aver that his trouble was worth such a sum of money, which the defendant has omitted to pay. This is called an "assumpsit on quantum meruit". Travis v. Kennedy, Tex.Civ.App., 66 S.W.2d 444, 446.

ASSUMPTION. The act of conceding or taking for granted. Gordon v. Schellhorn, 95 N.J.Eq. 563, 123 A. 549, 552.

The term is substantially synonymous with "inference," "probability," and "presumption." Ohio Bldg. Safety Vault Co. v. Industrial Board of Illinois, 277 Ill. 96, 115 N.E. 149, 154.

The act or agreement of assuming or taking upon one's self; the undertaking or adoption of a debt or obligation primarily resting upon another, as where the purchaser of real estate "assumes" a mortgage resting upon it, in which case he adopts the mortgage debt as his own and becomes personally liable for its payment. Lenz v. Railroad Co., 111 Wis. 198, 86 N.W. 607; Bell Telephone Co. of Pennsylvania v. Public Service Commission of Pennsylvania, 119 Pa.Super. 292, 181 A. 73, 75.

The difference between the purchaser of land assuming a mortgage on it and simply buying subject to the mortgage, is that In the former case he makes himself personally liable for the payment of the mortgage debt, while in the latter case he does not. Hancock v. Fleming, 103 Ind. 533, 3 N.E. 254. When he takes the conveyance subject to the mortgage, he is bound only to the extent of the property. Brichetto v. Raney, 76 Cal.App. 232, 245 P. 235, 241. Where one "assumes" a lease, he takes to himself the obligations, contracts, agreements, and benefits to which the other contracting party was entitled under the terms of the lease. Cincinnati, etc., R. Co. v. Indiana, etc., R. Co., 44 Ohio St. 287, 314, 7 N.E. 152.

ASSUMPTION OF INDEBTEDNESS. Means for one person to bind himself to pay debt incurred by another. Pawnee County Excise Board v. Kurn, 187 Oki. 110, 101 P.2d 614, 618.

ASSUMPTION OF RISK. Exists where none of fault for injury rests with plaintiff, but where plaintiff assumes consequences of injury occurring through fault of defendant, third person, or fault

of no one. Rodgers v. Stoller, 284 Ky. 108, 143 S. W.2d 1047, 1048. It is based upon the maxim "volenti non fit injuria," which means that to which a person assents is not regarded in law as an injury. Poole v. Lutz & Schmidt, 273 Ky. 586, 117 S.W.2d 575, 576. And predicated upon knowledge and consent. Kansas City Southern Ry. Co. v. Diggs, 205 Ark. 150, 167 S.W.2d 879, 883. While more generally used as between master and servant, courts do not confine it to such relationship. Adams' Adm'r v. Callis & Hughes, 253 Ky. 382, 69 S.W.2d 711, 712.

Doctrine held applicable in action by automobile guest passenger. Gill v. Arthur, 69 Ohio App. 386, 43 N.E.2d 894, 899. But held not applicable in automobile collision cases generally. Schubring v. Weggen, 234 Wis. 517, 291 N.W. 788, 789, 790, 791.

In some jurisdictions, doctrine confined to master and servant relation. Dowse v. Maine Cent. R. R., 91 N.H. 419, 20 A.2d 629, 631; Parker v. Grand Trunk Western R. Co., 261 Mich. 293, 246 N.W. 125, 126; West Texas Utilities Co. v. Reuner, Tex., 32 S.W.2d 264, 270. A term or condition in a contract of employment, either express or implied from the circumstances of the employment, by which the employee agrees that dangers of injury ordinarily or obviously incident to the discharge of his duty in the particular employment shall be at his own risk. Parker v. City of Wichita, 150 Kan. 249, 92 P.2d 86, 89; Wisconsin & Arkansas Lumber Co. v. Otts, 178 Ark. 283, 10 S.W.2d 364, 365; Southern Pac. Co. v. McCready, C.C.A.Cal., 47 F.2d 673, 675. It has reference to dangers that are normally and necessarily incident to the occupation, which are deemed to be assumed by workmen of mature years, whether they are actually aware of them or not. Chesapeake & O. Ry. Co. v. Cochran, C.C.A.W.Va., 22 F.2d 22, 25.

It is founded upon the knowledge of the servant either actual dr constructive, as to the hazards to be encountered and his consent to take the chance of danger. Schuppenies v. Oregon Short Line R. Co., 38 Idaho, 672, 225 P. 501, 505. But it does not include the risks from the negligence of the master, or the gross negligence of his superior servant. Burton Const. Co. v. Metcalfe, 162 Ky. 366, 172 S.W. 698, 702; "Contributory negligence" is not synonymous with assumption of risk. Dolese Bros. Co. v. Kahl, C.C.A.Iowa, 203 F. 627, 630. "Assumed risk" is founded upon the knowledge of the employee, either actual or constructive, of the risks to be encountered, and his consent to take the chance of injury therefrom. Contributory negligence implies misconduct, the doing of an imprudent act by the Injured party, or his dereliction in failing to take proper precaution for his personal safety. The doctrine of assumed risk is founded upon contract, while contributory negligence is solely matter of conduct. Wheeler v. Tyler, 129 Minn. 206, *152 N.W.* 137.

ASSUMPTION OF SKILL. The doctrine known as the "assumption of skill" on the part of the master sometimes makes the knowledge implied against the master relative to the safety of the place of work, and the nature, constituents, and general characteristics of the things used in the business, superior to that implied against the servant, especially where the servant is inexperienced. Hines v. Little, 26 Ga.App. 136, 105 S. E. 618.

ASSURANCE. A pledge, guaranty, or surety. National Watch Co. v. Weiss, 163 N.Y.S. 46, 47, 98 Misc. 453. A declaration tending to inspire full confidence. Texas & N. O. Ry. Co. v. New, Tex. Civ.App., 95 S.W.2d 170, 175. A making secure; insurance.

The term was formerly of very frequent use in the modern sense of insurance, particularly in English maritime law, and still appears in the policies of some companies, but is otherwise seldom seen of late years. There seems to be a tendency, however, to use *assurance* for the contracts of life insurance companies, and *insurance* for risks upon property.

In conveyancing. A deed or instrument of conveyance. The legal evidences of the transfer of property are in England called the "common assurances" of the kingdom, whereby every man's estate is *assured* to him, and all controversies, doubts, and difficulties are either prevented or removed. 2 Bl.Comm. 294. State v. Farrand, 8 N.J.Law, 335.

ASSURANCE, FURTHER, COVENANT FOR. See Covenant for Further Assurance.

ASSURE. To make certain and put beyond doubt. Armour & Co. v. New York, N. H. & H. R. Co., 41 R.I. 361, 103 A. 1031, 1033. To declare solemnly; to assure to any one with design of inspiring belief or confidence; to declare, aver, avouch, assert, or asseverate. Chanin v. Chevrolet Motor Co., C.C.A.Ill., 89 F.2d 889, 891. Used interchangeably With insure in insurance law; in real property documents it means a warranty; and in business documents, generally, it means a pledge or security. Utilities Engineering Institute v. Kafad, 58 N.Y.S.2d 743, 745, 185 Misc. 1035.

ASSURED. A person who has been insured by some insurance company, or underwriter, against losses or perils mentioned in the policy of insurance. Brockway v. Insurance Co., C.C.Pa., 29 Fed. 766.

Thus where a wife insures her husband's life for her own benefit and he has no interest in the policy, she is the "assured" and he the "insured."

The person for whose benefit the policy is issued and to whom the loss is payable, not necessarily the person on whose life or property the policy is written. Insurance Co. v. Luchs, 2 S.Ct. 949, 108 U.S. 498, 27 L.Ed. 800. Ordinarily synonymous with insured. Thompson v. Northwestern Mut. Life Ins. Co., 161 Iowa, 446, 143 N.W. 518.

ASSURED CLEAR DISTANCE AHEAD. Requires driver keep automobile under such control that he can stop in distance that he can clearly see, the distance varying with circumstances. Lauerman v. Strickler, 141 Pa.Super. 240, 14 A.2d 608, 610; Smiley v. Arrow Spring Bed Co., 138 Ohio St. 81, 33 N.E.2d 3, 5, 6, 7, 9, 133 A.L.R. 960.

ASSURER. An insurer against certain perils and dangers; an underwriter; and indemnifier.

ASSYTHEMENT. In Scotch law. Damages awarded to the relative of a murdered person from the guilty party, who has not been convicted and punished. Paters. Comp.

ASTIPULATION. A mutual agreement, assent, and consent between parties; also a witness or record.

ASTITRARIUS HiERES. An heir apparent who has been placed, by conveyance, in possession of his ancestor's estate during such ancestor's lifetime. Co.Litt. 8.

ASTITUTION. An arraignment *(q. v.).*

ASTRARIUS. In old English law. A householder; belonging to the house; a person in actual possession of a house.

ASTRARIUS H/ERES. Where the ancestor by conveyance hath set his heir apparent and his family in a house in his lifetime. Cunningham, L. Dict.

ASTRER. In old English law. A householder, or occupant of a house or hearth.

ASTRICT. In Scotch law. To assign to a particular mill.

ASTRICTION TO A MILL. A servitude by which grain growing on certain lands or brought within them must be carried to a certain mill to be ground, a certain multure or price being paid for the same. Jacob.

ASTRIHILTET. In Saxon law. A penalty for a wrong done by one in the king's peace. The offender was to replace the damage twofold. Spelman.

ASTRUM. A house, or place of habitation. Bract. fol. 267b; Cowell.

ASYLUM. A sanctuary, or place of refuge and protection, where criminals and debtors found shelter, and from which they could not be taken without sacrilege. Cromie v. Institution of Mercy, 3 Bush (Ky.) 391.

Shelter; refuge; protection from the hand of justice. The word includes not only place, but also shelter, security, protection.

A fugitive from justice, who has committed a crime in a foreign country, "seeks an asylum" at all times when he claims the use of the territories of the United States. In re De Giacomo, 12 Blatchf. 395, Fed.Cas.No.3,747. Every sovereign state has the right to offer an asylum to fugitives from other countries, but there is no corresponding right on the part of the alien to claim asylum. In recent years this right of asylum has been voluntarily limited by most states by treaties providing for the extradition *(q.* v.) of fugitive criminals.

In time of war, a place of refuge in neutral territory for belligerent war-ships.

An institution for the protection and relief of unfortunates, as asylums for the poor, for the deaf and dumb, or for the insane. Lawrence v. Leidigh, 58 Kan. 594, 50 P. 600, 62 Am.St.Rep. 631. The term may also include a hospital constructed and maintained by the United States government for the treatment of soldiers and ex-soldiers. Kemp v. Heebner, 77 Colo. 177, 234 P. 1068, 1069.

AT. A term of considerable elasticity of meaning, and somewhat indefinite. As used to fix a time, it does not necessarily mean eo instante or the identical time named, or even a fixed definite moment. Barnett v. Strain, 151 Ga. 553, 107 S.E. 530, 532; In re Clark's Estate, 61 P.2d 1221, 1222, 17 Cal.App.2d 323; And may mean on the same day, Perry v. Gross, 172 Cal. 468, 156 P. 1031, 1032. But "at" may often express simply nearness and proximity, and consequently may denote a reasonable time. Smeltzer v. Atlanta Coach Co., 44 Ga.App. 53, 160 S.E. 665, 666. Primarily, "at" means "near" or "near to," and involves the idea of proximity. Chesapeake & 0. Ry. Co. v. Hill, 215 Ky. 222, 284 S.W. 1047, 1048, 48 A.L.R. 327; "At" a village or city may mean "near." Howell v. State, 164 Ga. 204, 138 S.E. 206, 209; Board of Trustees of Albany College v. Monteith, 64 Or. 356, 130 P. 633, 636. Depending on the context, "at" may be equivalent to "in"; Millikan v. Security Trust Co., 187 Ind. 307, 118 N.E. 568; Fayette County Board of Education v. Tompkins, 212 Ky. 751, 280 S.W. 114, 116; "toward"; State v. Cunningham, 107 Miss. 140, 65 So. 115, 117, 51 L.R.A. (N.S.) 1179; "after"; Davis v. Godart, 131 Minn. 221, 154 N.W. 1091, 1092; "not later than"; Smith v. Jacksonville Oil Mill Co., 21 Ga.App. 679, 94 S.E. 900, 901; or be equivalent to the words on, by, about, under, over, through, from, to, etc.

AT ARM'S LENGTH. Beyond the reach of personal influence or control.

Parties are said to deal "at arm's length" when each stands upon the strict letter of his rights, and conducts the business in a formal manner, without trusting to the other's fairness or integrity, and without being subject to the other's control or overmastering influence.

AT BAR. Before the court. "The case at bar," etc. Dyer, 31.

AT ISSUE. Whenever the parties come to a point in the pleadings which is affirmed on one side and denied on the other, they are said to be at an issue. Willard v. Zehr, 215 Ill. 154, 74 N.E. 107, 108.

AT LARGE. Not limited to any particular place, district, person, matter, or question; open to discussion or controversy; not precluded. Free; unrestrained; not under corporal control; as a ferocious animal so free from restraint as to be liable to do mischief. Fully; in detail; in an extended form.

A congressman at large Is one who *is* elected by the electors of an entire state.

AT LAW. According to law; by, for, or in law; particularly in distinction from that which is done in or according to equity; or in titles such as sergeant at law, barrister at law, attorney or counsellor at law. Hooker v. Nichols, 116 N.C. 157, 21 S.E. 208.

AT LEAST. In deed of trust covenant specifying amount of fire insurance, means at lowest estimate, at smallest concession or claim, in smallest or lowest degree, at smallest number. Browne v. Franklin Fire Ins. Co., 225 Mo.App. 665, 37 S.W.2d 977, 979.

AT ONCE. In contracts of various kinds the phrase is construed as synonymous with "immediately" and "forthwith," where the subject-matter is the giving of notice. The use of such term does not ordinarily call for instantaneous action, but rather that notice shall be given within such time as is reasonable in view of the circumstances. George v. Aetna Casualty and Surety Co., 121 Neb. 647, 238 N.W. 36, 39. Likewise, contracts or statutes requiring the performance of a particular act "at once" are usually held to mean simply within a reasonable time. Arizona Power Co. v. State, 19 Ariz. 114, 166 P. 275, 277. An order to "ship at once" is synonymous with "as soon as possible". Myers v. Hardin, 208 Ark. 505, 186 S. W.2d 925, 928.

AT SEA. Out of the limits of any port or harbor on the sea-coast. U. S. v. Symonds, 7 S.Ct. 411, 120 U.S. 46, 30 L.Ed. 557.

AT WAR. Death of seaman from Pearl Harbor Attack as occurring while nation was "at war". Rosenau v. Idaho Mut. Ben. Ass'n, 65 Idaho 408, 145 P.2d 227, 232.

AT ANY TIME. Grant of time without limit. Haworth v. Hubbard, 220 Ind. 611, 44 N.E.2d 967, 970, 144 A.L.R. 887. Period of time limited by circumstances. Imes v. Globe Oil & Refining Co., 84 P.2d 1106, 1107, 1108, 184 Okl. 79. Within a reasonable time. Haworth v. Hubbard, 220 Ind. 611, 44 N.E.2d 967, 970, 144 A.L.R. 887.

AT ANY TIME PRIOR TO. Synonymous with "not later than". Hughes v. United States, C.C.A. Tenn., 114 F.2d 285, 287.

AT THE COURTHOUSE DOOR. In proximity of courthouse door. At place provided for posting of legal notices in courthouse. Matson v. Federal Farm Mortg. Corporation, Tex.Civ.App., 151 S.W. 2d 636, 640, 641.

AT THE END OF THE WILL.. The words "at the end of the will" within statute providing that every will shall be subscribed by testator at the end of the will mean the end of the language and not paper on which it is written. In re Golden's Will, 300 N.Y.S. 737, 738, 165 Misc. 205; In re Hildreth's Will, 36 N.Y.S.2d 938, 939, 940.

AT TIME CAUSE OF ACTION ACCRUES. Is sometimes applied to present enforcible demand, but more often simply means to arise or come into existence. Stone v. Phillips, 142 Tex. 216, 176 S. W.2d 932, 933.

ATAMITA. In the civil law. A great-great-great-grandfather's sister.

ATAVIA. In the civil law. A great-grandmother's grandmother.

ATAVUNCULUS. The brother of a great-grandfather's grandmother, or a great-great-great-grandfather's brother.

ATAVUS. The male ascendant in the fifth degree. The great-grandfather's or great-grandmother's grandfather; a fourth grandfather.

The ascending line of lineal ancestry runs thus: *Pater, Avus, Proavus, Abavus, Atavus, Tritavus.* The seventh generation in the ascending scale will be *Tritavi-pater,* and the next above it *Proavi-atavus.*

ATHA. (Spelled also *Atta, Athe, Atte.)* In Saxon law. An oath; the power or privilege of exacting and administering an oath. Spelman.

ATHEIST. One who does not believe in the existence of a God. Gibson v.. Insurance Co., 37 N.Y. 584.

ATIA. Hatred or See De Odio et Atia.

ATILIAN LAW. See Lex Atilia.

ATILIUM. The tackle or rigging of a ship; the harness or tackle of a plow. Spelman.

ATINIAN LAW. See Lex Atinia.

ATMATERTERA. A great-grandfather's grandmother's sister, *(atavice soror;)* called by Bracton *"atmaterwera magna."* Bract. fol. 68b.

ATOMIZE. To reduce to atoms or atom-like particles; pulverize; spray. In re Preble, Cust. & Pat.App., 45 F.2d 1007, 1009; Stearns-Roger Mfg. Co. v. Greenawalt, C.C.A.Colo., 62 F.2d 1033, 1039.

ATPATRUUS. The brother of a great-grandfather's grandfather.

ATRAVESADOS. In maritime law. A Spanish term signifying athwart, at right angles, or abeam; sometimes used as descriptive of the position of a vessel which is "lying to." The Hugo, D.C.N.Y., 57 F. 403, 410.

ATROCIOUS ASSAULT AND BATTERY. An assault by maiming and wounding. State v. Staw, 97 N.J.Law, 349, 116 A. 425.

ATROCITY. A word implying conduct that is outrageously or wantonly wicked, criminal, vile, cruel; extremely horrible and shocking. State v. Wyman, 56 Mont. 600, 186 P. 1, 3.

ATROPINE. A drug employed for purposes of dilating the eye so as to put the small muscles inside the eye at rest and to prevent adhesions of the iris and lens. De Zon v. American President Lines, C.C.A.Cal., 129 F.2d 404, 406.

ATS. At suit of.

ATTACH. To bind, fasten, tie, or connect, to make fast or join, and its antonyms are separate, detach, remove. State v. Modern Box Makers, 217 Minn. 41, 13 N.W.2d 731, 733. To take or apprehend by commandment of a writ or precept. Buckeye Pipe-Line Co. v. Fee, 62 Ohio St. 543, 57 N.E. 446, 78 Am.St.Rep. 743.

It differs from *arrest,* because it takes not only the body, but sometimes the goods, whereas an arrest is only against the person; besides, he who attaches keeps the party attached in order to produce him in court on the day named, but he who arrests lodges the person arrested in the custody of a higher power, to be forthwith disposed of. Fleta, lib. 5, c. 24. See Attachment.

In a broad sense, "attach" indicates any seizure of property for the purpose of bringing it within the custody of the court, and is not limited to a seizure on mesne process. In re Clark, D.C.Mich., 11 F.2d 540, 541.

ATTACHE. A person attached to an embassy, to the suite of an ambassador, or to a foreign legation. One connected with an office, *e. g.,* a public office. Noel v. Lewis, 35 Cal.App. 658, 170 P. 857, 859.

ATTACHED. A term describing the physical union of two otherwise independent structures or objects, or the relation between two parts of a single structure, each having its own function. National Brake & Electric Co. v. Christensen, C. C.A.Wis., 229 F. 564, 570. As applied to buildings, the term is often synonymous with "annexed." Williams Mfg. Co. v. Insurance Co. of North America, 93 Vt. 161, 106 A. 657, 659.

The word "attached," in an affidavit of service of a notice, used to designate a notice appearing on the reverse side of the affidavit, is improper. Wood v. Yearous, 159 Iowa, 211, 140 N.W. 362, 364.

ATTACHIAMENTA. L. Lat. Attachment.

ATTACHIAMENTA BONORUM. A distress formerly taken upon goods and chattels, by the legal *attachiators* or bailiffs, as security to answer an action for personal estate or debt.

ATTACHIAMENTA DE PLACITUS CORONAE. Attachment of pleas of the crown. Jewison v. Dyson, 9 Mees. & W. 544.

ATTACHIAMENTA DE SPINIS ET BOSCIS. A privilege granted to the officers of a forest to take to their own use thorns, brush, and windfalls, within their precincts. Kenn.Par.Antiq. 209.

ATTACHIAMENTUM. L. Lat. An attachment.

ATTACHING CREDITOR. See Creditor.

ATTACHMENT. The act or process of taking, apprehending, or seizing persons or property, by virtue of a writ, summons, or other judicial order, and bringing the same into the custody of the law; used either for the purpose of bringing a person before the court, of acquiring jurisdiction over the property seized, to compel an appearance, to furnish security for debt or costs, or to arrest a fund in the hands of a third person who may become liable to pay it over. Also the writ or other process for the accomplishment of the purposes above enumerated, this being the more common use of the word. A remedy ancillary to an action by which plaintiff is enabled to acquire a lien upon property or effects of defendant for satisfaction of judgment which plaintiff may obtain. First Nat. Bank & Trust Co. of Vermillion v. Kirby, 62 S.D. 489, 253 N.W. 616; Lipscomb v. Rankin, Tex.Civ.App., 139 S.W.2d 367, 369. Though sometimes called an ancillary or auxiliary proceeding, it is in all essential respects, a suit. Farmers State Bank of Lexington v. Lemmer, 130 Neb. 211, 264 N.W. 415, 416.

The purpose is to take defendant's property into legal custody, so that it may be applied on defendant's debt to plaintiff when established. John Deere Plow Co. of St. Louis v. L. D. Jennings, Inc., 203 S.C. 426, 27 S.E.2d 571, 572; Union Bank & Trust Co. v. Edwards, 281 Ky. 693, 137 23. W.2d 344, 348.

At common law, "attachment" was procedure whereby sheriff was, commanded to attach a defendant who, after being personally served, disobeyed original writ of summons, by keeping certain of his goods which he would forfeit if he did not appear, or by making him find securities who would be amerced if he continued his nonappearance, and, if after such attachment he still neglected to appear, he would not only forfeit this security, but was compellable by a writ of distringas infinite. Grimmett v. Barnwell, 184 Ga. 461, 192 S.E. 191, 194, 116 A.L.R. 257.

Execution and attachment distinguished. See Execution.

Persons

A writ issued by a court of record, commanding the sheriff to bring before it a person who has been guilty of contempt of court, either in neglect or abuse of its process or of subordinate powers. 3 Bl.Comm. 280; 4 Bl.Comm. 283; Commonwealth v. Shecter, 250 Pa. 282, 95 A. 468, 470.

Property

A species of mesne process, by which a writ is issued at the institution or during the progress of an action, commanding the sheriff to seize the property, rights, credits, or effects of the defendant to be held as security for the satisfaction of such judgment as the plaintiff may recover. It is principally used against absconding, concealed, or fraudulent debtors. U. S. Capsule Co. v. Isaacs, 23 Ind.App. 533, 55 N.E. 832.

To Give Jurisdiction

Where the defendant is a non-resident, or beyond the territorial jurisdiction of the court, his goods or land within the territory may be seized upon process of attachment; whereby he will be compelled to enter an appearance, or the court acquires jurisdiction so far as to dispose of the property attached. This is sometimes called "foreign attachment." Megee v. Beirne, 39 Pa. 50; Bray v. McClury, 55 Mo. 128. In such a case, the proceeding becomes in substance one in rem against the attached property. St. John v. Parsons, 54 Ohio App. 420, 7 N.E.2d 1013, 1014.

Domestic and Foreign

In some jurisdictions it is common to give the name "domestic attachment" to one issuing against a resident debtor, (upon the special ground of fraud, intention to abscond, etc.,) and to designate an attachment against a non-resident, or his property, as "foreign." Longwell v. Hartwell, 30 A. 495, 164 Pa. 533; David E. Kennedy, Inc. v. Schleindl, 290 Pa. 38, 137 A. 815, 816, 53 A.L.R. 1020.

But the term "foreign attachment" more properly belongs to the process otherwise familiarly known as "garnishment." It was a peculiar and ancient remedy open to creditors within the jurisdiction of the city of London, by which they were enabled to satisfy their own debts by attaching or seizing the money or goods of the debtor in the hands of a third person within the jurisdiction of the city. Welsh v. Blackwell, 14 N.J.Law, 346. This power and process survive in modern law, in all common-law jurisdictions, and are variously denominated. "garnishment," "trustee process," or "factorizing." Raiguel v. McConnell, 25 Pa. 362, 363. A "foreign attachment" is a mesne process issued to compel a foreign debtor to appear to the suit of his creditor, while "attachment execution" is a final process issued for the purpose of enforcing a judgment already obtained. Williams v. Ricca, 324 Pa. 33, 187 A. 722, 723.

ATTACHMENT EXECUTION. A name given in some states to a process of garnishment for the satisfaction of a judgment. As to the judgment debtor it is an execution; but as to the garnishee it is an original process—a summons commanding him to appear and show cause, if any he has, why the judgment should not be levied on the goods and effects of the defendant in his hands. Sniderman v. Nerone, 7 A.2d 496, 499, 136 Pa.Super. 381.

ATTACHMENT OF PRIVILEGE. In English law. A process by which a man, by virtue of his privilege, calls another to litigate in that court to which he himself belongs, and who has the privilege to answer there. A writ issued to apprehend a person in a privileged place. *Termes de la Ley.*

ATTACHMENT OF THE FOREST. One of the three courts formerly held in forests. The highest court was called "justice in eyre's seat;" the middle, the "swainmote;" and the lowest, the "attachment." Manwood, 90, 99.

ATTAIN. To reach or come to by progression or motion; to arrive at; as, to attain a ripe old age. Watkins v. Metropolitan Life Ins. Co., 156 Kan. 27, 131 P.2d 722, 723.

ATTAINDER. That extinction of civil rights and capacities which takes place whenever a person who has committed treason or felony receives sentence of death for his crime. 1 Steph.Com. 408; 1 Bish.Cr.L. § 641; State v. Hastings, 37 Neb. 96, 55 N.W. 781.

The effect of "attainder" upon such felon is, in general terms, that all his estate, real and personal, is forfeited. Caldwell v. Hill, 179 Ga. 417, 176 S.E. 381, 386, 98 A.L.R. 1124. It differs from conviction, in that it is *after* judgment, whereas conviction is upon the verdict of guilty, but *before* judgment pronounced, and may be quashed upon some point of law reserved, or judgment may be arrested. The consequences of attainder are forfeiture of property and corruption of blood. 4 Bl.Comm. 380. At the common law, attainder resulted in three ways, viz. : by *confession, by verdict,* and *by process* or *outlawry.* The first case was where the prisoner pleaded guilty at the bar, or having fled to sanctuary, confessed his guilt and abjured the realm to save his life. The second was where the prisoner pleaded not guilty at the bar, and the jury brought in a verdict against him. The third, when the person accused made his escape and was outlawed. Coke, Litt. 391.

In England, by statute 33 & 34 Vict. c. 23, attainder upon conviction, with consequent corruption of blood, forfeiture, or escheat, is abolished. In the United States, the doctrine of attainder is now, scarcely known, although during and shortly after the Revolution acts of attainder were passed by several of the states. The passage of such bills is expressly forbidden by the constitution.

### Bill of Attainder

A legislative act, directed against a designated person, pronouncing him guilty of an alleged crime, (usually treason,) without trial or conviction according to the recognized rules of procedure, and passing sentence of death and attainder upon him.

"Bills of attainder," as they are technically called, are such special acts of the legislature as inflict capital punishments upon persons supposed to be guilty of high offenses, such as treason and felony, without any conviction in the ordinary course of judicial proceedings. If an act inflicts a milder degree of punishment than death, it is called a "bill of pains and penalties," but both are included in the prohibition in the Federal constitution. Losier v. Sherman, 157 Kan. 153, 138 P.2d 272, 273; State v. Graves, 352 Mo. 1102, 182 S.W.2d 46, 54.

ATTAINT. Attainted, stained, or blackened.

In old English practice. A writ which lay to inquire whether a jury of twelve men had given a false verdict, in order that the judgment might be reversed. 3 Bl.Comm. 402; Bract. fol. 288b-292; Fleta, 1, 5, c. 22, § 8.

This inquiry was made by a grand assise or jury of twenty-four persons, usually knights, and, if they found the verdict a false one, the judgment was that the jurors should become infamous, should forfeit their goods and the profits of their lands, should themselves be imprisoned, and their wives and children thrust out of doors, should have their houses razed, their trees extirpated, and their meadows plowed up, and that the plaintiff should be restored to all that he lost by reason of the unjust verdict. 3 Bl.Comm. 404; Co.Litt. 294b.

ATTAINT D'UNE CAUSE, In French law. The gain of a suit.

ATTEMPT.

### In Civil Matters

In statutes and in cases other than criminal prosecutions an "attempt" ordinarily means an intent combined with an act falling short of the thing intended. In re Bergland's Estate, 180 Cal. 629, 182 P. 277, 283, 5 A.L.R. 1363. It may be described as an endeavor to do an act, carried beyond mere preparation, but short of execution. Columbian Ins. Co. of Indiana v. Modern Laundry, C.C.A.Minn., 277 F. 355, 358, 20 A.L.R. 1159.

### In Criminal Law

An effort or endeavor to accomplish a crime, amounting to more than mere preparation or planning for it, which, if not prevented, would have resulted in the full consummation of the act attempted, but which, in fact, does not bring to pass the party's ultimate design. Dooley v. State, 27 Ala.App. 261, 170 So. 96, 98.

Acts amounting to mere preparation for commission of crime, if unaccompanied by some overt act toward actual commission, do not amount to an "attempt" and cannot be punished as such. People v. Lombard, 131 Cal.App. 525, 21 P.2d 955. Implies an intent and an actual effort to carry out or consummate the intent or purpose. Dooley v. State, 27 Ala.App. 261, 170 So. 96, 97, 98.

To constitute an act of attempt, the act must possess four characteristics : First, it must be a step toward a punishable offense ; second, it must be apparently (but not necessarily in reality) adapted to the purpose intended; third, it must come dangerously near to success; fourth, it must not succeed. State v. Ainsworth, 146 Kan. 665, 72 P.2d 962.

ATTENDANT, n. One who owes a duty or service to another, or in some sort depends upon him. Termes de la Ley. One who follows and waits upon another.

ATTENDANT, *adj.* Accompanying, or connected with. Fletcher v. Winnfield Bottling Works, 160 La. 261, 107 So. 103, 104.

ATTENDANT TERMS. In English law, terms, (usually mortgages,) for a long period of years, which are created or kept outstanding for the

purpose of *attending* or waiting upon and protecting the inheritance. 1 Steph.Comm. 351.

A phrase used in conveyancing to denote estates which are kept alive, after the objects for which they were originally created have ceased, so that they might be deemed merged or satisfied, for the purpose of protecting or strengthening the title of the owner. Abbott.

ATTENDED BY A PHYSICIAN. As used in application for insurance, requires an attendance with reference to some disease of a serious character, affecting sound bodily health and does not refer to a mere temporary indisposition or an ailment trivial in its nature. Houston v. Metropolitan Life Ins. Co., 232 Mo.App. 195, 97 S.W.2d 856, 861.

ATTENTAT. Lat. He attempts.

In the civil and canon law. Anything wrongfully innovated or *attempted* in a suit by an inferior judge (or judge a *quo)* pending an appeal. 1 Addams, 22, note; Shelf.Mar. & Div. 562; Ayliffe, Parerg. 100.

ATTENTION. Consideration; notice. The phrase "your bill shall have attention" was held to be ambiguous and not to amount to an acceptance of the bill. 2 B. & Aid. 113.

ATTERMINARE. In old English law. To put off to a succeeding term; to prolong the time of payment of a debt. Stat.Westm. 2, c. 4; Cowell; Blount.

ATTERMINING. In old English law. A putting off; the granting of a time or term, as for the payment of a debt. Cowell.

ATTERMOIEMENT. In canon law. A making terms; a composition, as with creditors. 7 Low.C. 272, 306.

ATTEST. To bear witness to; to bear witness to a fact; to affirm to be true or genuine; to act as a witness to; to certify; to certify to the verity of a copy of a public document; formally by signature; to make solemn declaration in words or writing to support a fact; to signify by subscription of his name that the signer has witnessed the execution of the particular instrument. Lindsey v. Realty Trust Co., Tex.Civ.App., 75 S.W.2d 322, 324; City Lumber Co. of Bridgeport v. Borsuk, 131 Conn. 640, 41 A.2d 775, 778.

Also the technical word by which, in the practice in many of the states, a certifying officer gives assurance of the genuineness and correctness of a copy. Thus, an "attested" copy of a document is one which has been examined and compared with the original, with a certificate or memorandum of its correctness, signed by the persons who have examined it. Gerner v. Mosher, 58 Neb. 135, 78 N.W. 384, 46 L.R.A. 244.

ATTESTATION. The act of witnessing an instrument in writing, at the request of the party making the same, and subscribing it as a witness. In re Jones' Estate, 101 Wash. 128, 172 P. 206, 207. The act of witnessing the execution of a paper and subscribing the name of the witness in testimony of such fact. In re Carlson's Estate, 156 Or. 597, 68 P.2d 119, 121.

*Execution* and *attestation* are clearly distinct formalities ; the former being the act of the party, the latter of the witnesses only. *Subscription* differs from *attestation,* in that the former is the mere manual or mechanical act of signing—the act of the hand, whereas the latter signifies the mental act of bearing witness to—the act of the senses. In re Smith's Estate, 130 Neb. 739, 266 N.W. 611, 613.

ATTESTATION CLAUSE. That clause wherein the witnesses certify that the instrument has been executed before them, and the manner of the execution of the same.

In wills. A certificate certifying as to facts and circumstances attending execution of will. In re Bragg's Estate, 106 Mont. 132, 76 P.2d 57, 62.

ATTESTATION OF WILL. Act of witnessing performance of statutory requirements to valid execution. Davis v. Davis, Tex.Civ.App., 45 S.W. 2d 240, 241; Zaruba v. Schumaker, Tex.Civ.App., 178 S.W.2d 542, 543.

There is some authority to the effect that there may be a perfect attestation without subscription, on the theory that attestation is mental, and subscription is mechanical. In re Chambers' Estate, 187 Wash. 417, 60 P.2d 41, 44.

ATTESTED COPY. See Attest.

ATTESTING WITNESS. One who signs his name to an instrument, at the request of the party or parties, for the purpose of proving and identifying it. In re McDonough's Estate, 193 N.Y.S. 734, 736, 201 App.Div. 203.

ATTESTOR. One who attests or vouches for.

ATTESTOR OF A CAUTIONER. In Scotch practice. A person who attests the sufficiency of a cautioner, and agrees to become *subsidiarie* liable for the debt. Bell.

ATTILE. In old English law. The rigging or furniture of a ship. Jacob, L.Dict. Rigging; tackle. Cowell.

ATTINCTA, L. Lat. An attaint, stain, or blackening; a conviction or finding of guilty of some offense. Adams Gloss.

ATTORN. To turn over; to transfer to another money or goods; to assign to some particular use or service. Hemminger v. Klaprath, 15 N.J. Misc. 163, 189 A. 363, 364. To consent to the transfer of a rent or reversion. To agree to become tenant to one as owner or landlord of an estate previously held of another, or to agree to recognize a new owner of a property or estate and promise payment of rent to him. Hurley v. Stevens, 220 Mo.App. 1057, 279 S.W. 720, 722.

Feudal Law

To turn over; to transfer to another money or goods; to assign to some particular use or service. 2 Bla.Comm. 288; 1 Spence, Eq.Jur. 137.

Where a lord aliened his seigniory, he might, with the consent of the tenant, and in some cases without, *attorn* or transfer the homage and service of the latter to the alienee or new lord. Bract. fols. 81b, 82.

ATTORNARE, Lat. To attorn; to transfer or turn over; to appoint an attorney or substitute.

ATTORNARE REM. To turn over money or goods, *i. e.,* to assign or appropriate them to some particular use or service.

ATTORNATO FACIENDO VEL RECIPIENDO. An obsolete writ, which commanded a sheriff or steward of a county court or hundred court to receive and admit an attorney to appear for the person that owed suit of court. Fitz.N.B. 156, 349.

ATTORNATUS. One who is attorne[y], or put in the place of another; a substitute; hence, an attorney. 7 C.J.S. p. 694.

ATTORNATUS FERE IN OMNIBUS PERSONAM DOMINI REPRESENTAT. An attorney represents the person of his master in almost all respects. Adams Gloss., citing Bract. fol. 342.

ATTORNE. L. Fr. In old English law. An attorney. Britt. c. 126.

ATTORNEY. In the most general sense this term denotes an agent or substitute, or one who is appointed and authorized to act in the place or stead of another. Nardi v. Poinsatte, D.C.Ind., 46 F.2d 347, 348. An agent, or one acting on behalf of another. Sherts v. Fulton Nat. Bank of Lancaster, 342 Pa. 337, 21 A.2d 18.

One who s put in place, stead, and turn of another to ma lage his matters of law. Kaufman v. Jurczak, 102 N.J.Eq. 66, 139 A. 716. An agent employed by party to case to manage it for him. McLyman v. Miller, 52 R.I. 374, 161 A. 111, 112.

When used with reference to the proceedings of courts, or the transaction of business in the courts, the term always means "attorney at law" *(q.* v.) unless a contrary meaning is clearly indicated. In re Morse, 98 Vt. 85, 126 A. 550, 551, 36 A.L.R. 527.

"Lawyer" and "attorney" are synonymous. People v. Taylor, 56 Colo. 441, 138 P. 762, 763.

—Attorney ad hoc. See Ad Hoc.

—Attorney at large. In old practice. An attorney who practiced in all the courts. Cowell.

—Attorney at law. An advocate, counsel, or official agent employed in preparing, managing, and trying cases in the courts. An officer in a court of justice, who is employed by a party in a cause to manage it for him. In re Bergeron, 220 Mass. 472, 107 N.E. 1007, 1008, Ann.Cas.1917A, 549.

In English law. A public officer belonging to the superior courts of common law at Westminster, who conducted legal proceedings on behalf of others, called his clients, by whom he was retained; he answered to the solicitor in the courts of chancery, and the proctor of the admiralty, ecclesiastical, Probate, and divorce courts. An attorney was almost invariably also a solicitor. It is now provided by the judicature act, 1873, § 87, that solicitors, attorneys, Dr proctors of, or by law empowered to practice in, any court the jurisdiction of which is by that act transferred to the high court of justice or the court of appeal, shall be called "so .citors of the supreme court." Wharton.

The term 'attorney at law," as used in the United States, usua ly includes "barrister," "counsellor," and "solicitor," *in* the sense in which those terms are used in England. In some states, as well as in the United States supreme court, "attorney" and "counsellor" are distinguishable, the former term being applied to the younger members of the bar, and to those who carry on the practice and formal parts of the suit, while "counsellor" is the adviser, or special counsel retained to try the cause. Rap. & L.

—Attorney in fact. A private attorney authorized by another to act in his place and stead, either for some particular purpose, as to do a particular act, or for the transaction of business in general, not of a legal character. This authority is conferred by an instrument in writing, called a "letter of attorney," or more commonly a "power of attorney." Treat v. Tolman, C.C.A.N.Y., 113 F. 893, 51 C.C.A. 522; Massachusetts Bonding & Insurance Co. v. Bankers' Surety Co., 96 Ind.App. 250, 179 N.E. 329, 334.

This term is employed to designate persons who act under a special agency, or a special letter of attorney, so that they are appointed *in fact-um,* for the deed, or special act to be performed; but in a more extended sense it includes all other agents employed in any business, or to do any act or acts *in pais* for another. Bacon, Abr. *Attorney;* Story, Ag. § 25.

—Attorney of record. Attorney whose name must appear somewhere in permanent records or files of case, or on the pleadings or some instrument filed in the case, or on appearance docket. Delaney v. Husband, 64 N.J.L. 275, 45 A. 265. Person whom the client has named as his agent upon whom service of papers may be made. Reynolds v. Reynolds, 21 Ca1.2d 580, 134 P.2d 251, 254.

—Attorney of the wards and liveries. In English law. This was the third officer of the duchy court. Bac.Abr. "Attorney."

—Attorney's certificate. In English practice, a certificate of the commissioners of stamps that the attorney therein named has paid the annual tax or duty. This must be renewed yearly; and the penalty for practising without such certificate is fifty pounds; Stat. 37 Geo. III. c. 90, §§ 26, 28, 30. See also 7 & 8 Vict. c. 73, §§ 21-26; 16 & 17 Vict. c. 63.

—Attorney's lien. See Attorney's Lien.

—Letter of attorney. A power of attorney; a written instrument by which one person constitutes another his true and lawful attorney, in order that the latter may do for the former, and in his place and stead, some lawful act. People v. Smith, 112 Mich. 192, 70 N.W. 466, 67 Am.St.Rep. 392. An instrument of writing, appointing an attorney in fact for an avowed purpose and setting forth his powers and duties. Mullins v. Commonwealth, 179 Ky. 71, 200 S.W. 9, 11. It is, in effect, a mere contract of agency. Filtsch v. Bishop, 118 Okl. 272, 247 P. 1110, 1111. A *general* power authorizes the agent to act generally in behalf of the principal. A *special* power is one limited to particular acts.

—Power of attorney. Commonly meant the instrument by which authority of one person to act in place and stead of another as attorney in fact is set forth. In re Katz' Estate, 274 N.Y.S. 202, 152 Misc. 757.

—Public attorney. A name sometimes given to an attorney at law, as distinguished from a *private* attorney, or attorney in fact.

ATTORNEY GENERAL.

English Law

The chief law officer of the realm, being created by letters patent, whose office is to exhibit informations and prosecute for the crown in matters criminal, and to file bills in the exchequer in any matter concerning the king's revenue. 3 Bla. Comm. 27; Termes de la Ley; Wilentz v. Hendrickson, 133 N.J.Eq. 447, 33 A.2d 366, 374.

American Law

The attorney general of the United States is the head of the department of justice, appointed by the president, and a member of the cabinet. He appears in behalf of the government in all cases in the supreme court in which the government is interested, and gives his legal advice to the president and heads of departments upon questions submitted to him. Act of Sept. 24, 1789 (5 U.S.C.A. §§ 291, 303, 309).

He is the chief law officer of the federal and state governments with the duty of representing the sovereign, national or state. Johnson v. Commonwealth, ex rel. Meredith, 291 Ky. 829, 165 S.W.2d 820, 826.

In each state also there is an attorney general, or similar officer, who appears for the people, as in England the attorney general appears for the crown. State v. District Court, 22 Mont. 25, 55 Pac. 916; He is the chief law officer of the state and head of the legal department. People v. Newcomer, 284 Ill. 315, 120 N.E. 244, 247; Darling Apartment Co. v. Springer, 22 A.2d 397, 403, 25 Del. 420, 137 A.L.R. 803.

ATTORNEY GENERAL'S BILL. An indictment presented to grand jury by leave of court without prior complaint before magistrate and holding for court. Commonwealth v. Wilson, 134 Pa. Super. 222, 4 A.2d 324, 327.

ATTORNEY'S LIEN. The right of an attorney at law to hold or retain in his possession the money or property of a client until his proper charges have been adjusted and paid. It requires no equitable proceeding for its establishment. Sweeley v. Sieman, 123 Iowa, 183, 98 N.W. 571. Also a lien on funds in court payable to the client, or on a judgment or decree or award in his favor, recovered through the exertions of the attorney, and for the enforcement of which he must invoke the equitable aid of the court. Fowler v. Lewis, 36 W. Va. 112, 14 S.E. 447.

*Charging lien.* An attorney's lien, for his proper compensation, on the fund or judgment which his client has recovered by means of his professional aid and services. Goodrich v. McDonald, 112 N.Y. 157, 19 N.E. 649; In re Craig, 157 N.Y.S. 310, 311, 171 App.Div. 218. It is a specific lien covering only the services rendered by an attorney in the action in which the judgment was obtained, whereas a retaining lien is a general lien for the balance of the account between the attorney and his client, and applies to the property of the client which may come into the attorney's possession in the course of his employment. In re Heinsheimer, 143 N.Y.S. 895, 896, 159 App.Div. 33.

*Retaining lien.* The lien which an attorney has upon all his client's papers, deeds, vouchers, etc., which remain in his possession, entitling him to retain them until satisfaction of his claims for professional services. In re Wilson, D.C.N.Y., 12 F. 239; It is a general lien. Roxana Petroleum Co. v. Rice, 109 Okl. 161, 235 P. 502, 507.

ATTORNEYSHIP. The office of an agent or *attorney.*

ATTORNMENT. In feudal and old English law. A turning over or transfer by a lord of the services of his tenant to the grantee of his seigniory.

Attornment is the act of a person who holds a leasehold interest in land, or estate for life or years, by which he agrees to become the tenant of a stranger who has acquired the fee in the land, or the remainder or reversion, or the right to the rent or services by which the tenant holds. Snyder v. Bernstein Bros., 201 Iowa, 931, 208 N.W. 503, 504. It is an act by which a tenant acknowledges his obligation to a new landlord. Del-New Co. v. James, 167 A. 747, 748, 111 N.J.L. 157.

And requires an overt act by *the* tenant. Hemminger v. Klaprath, 189 A. 363, 15 N.J.Misc. 163.

The doctrine of attornment grew out of the peculiar relations existing between the landlord and his tenant under the feudal law, and the reasons for the rule never had any existence in this country, and is inconsistent with our laws, customs and institutions. Beyond its application to estop a tenant from denying the title of his landlord, it can serve but little, if any, useful purpose. Perrin v. Lepper, 34 Mich. 292.

ATTRACTIVE AGENCIES DOCTRINE. See Attractive Nuisance Doctrine. Schock v. Ringling Bros. and Barnum & Bailey Combined Shows, 5 Wash. 599, 105 P.2d 838, 843.

ATTRACTIVE INSTRUMENTALITIES DOCTRINE. See Attractive Nuisance Doctrine. Schock v. Ringling Bros. and Barnum & Bailey Combined Shows, 5 Wash.2d 599, 105 P.2d 838, 843.

ATTRACTIVE NUISANCE DOCTRINE. The doctrine is that one maintaining on his premises a condition, instrumentality, machine or other agency, which is dangerous to young children because of their inability to appreciate peril and may reasonably be expected to attract them to premises, owes duty to exercise reasonable care to protect them against dangers of such attraction. Schock v. Ringling Bros. and Barnum & Bailey Combined Shows, 5 Wash.2d 599, 105 P.2d 838, 843.

The doctrine, is that person who has an instrumentality, agency, or condition upon his own premises, or who creates such condition on the premises of another, or in a public place, which may reasonably be apprehended to be a source of danger to children, is under a duty to take such precautions as a reasonably prudent man would take to prevent injury to children of tender years whom he knows to be accustomed to resort there, or who may, by reason of something there which may be expected to attract them, come there to play. Atlantic Coast Line R. Co. v. O'Neal, 48 Ga.App. 706, 172 S.E. 740, 741. It does not apply to natural condition or common dangers existing in order of nature, McCall v. McCallie, 48 Ga.App. 99, 171 S.E. 843, 844, applies only in favor of children of tender years, too young to appreciate danger. Drew v. Lett, 95 Ind. App. 89, 182 N.E. 547, 548. Requires that the attraction be visible from a public place or a place where children have a right to be. Rokicki *v.* Polish Nat. Alliance of United States of North America, 314 Ill.App. 380, 41 N.E.2d 300.

AU BESOIN. Fr. In case of need. *"Au besoin chez Messieurs ____ a ____."* "In case of need, apply to Messrs. ____ at ____". A phrase sometimes used in the direction of a bill of exchange, pointing out the person to whom application may be made for payment in case of failure or refusal of the drawee to pay. Story, Bills § 65.

AUBAINE. See Droit d'Aubaine.

AUCTION. A public sale of land or goods, at public outcry, to the highest bidder. Perry Trading Co. v. City of Tallahassee, 128 Fla. 424, 174 So. 854, 857, 111 A.L.R. 463.

A sale by auction is a, sale by public outcry to the highest bidder on the spot. Barber Lumber Co. v. Gifford, 25 Idaho, 654, 139 P. 557, 560.

While auction is very generally defined as a sale to the *highest* bidder, and this is the usual meaning, there may be a sale to the *lowest* bidder, as where land is sold for non-payment of taxes to whomsoever will take it for the shortest term; or where a contract is offered to the one who will perform it at the lowest price. And these appear fairly included In the term "auction." Abbott.

Dutch Auction

A method of sale by auction which consists in the public offer of the property at a price beyond its value, and then gradually lowering the price until some one becomes the purchaser. Crandall v. State, 28 Ohio St. 482.

Public Auction

A sale of property at auction, where any and all persons who choose are permitted to attend and offer bids. The phrase imports a sale to the highest and best bidder with absolute freedom for competitive bidding. State v. Miller, 52 Mont. 562, 160 P. 513, 515.

Though this phrase is frequently used, It is doubtful whether the word "public" adds anything to the force of the expression, since4"auction" itself imports publicity. If there can be such a thing as a private auction, it must be one where the property is sold to the highest bidder, but only certain persons, or a certain class of persons, are permitted to be present or to offer bids.

AUCTIONARL²E. Catalogues of goods for public sale or auction.

AUCTIONARIUS. A seller; a regrator; a retailer; one who bought and sold; an auctioneer, in the modern sense. Spelman, Gloss. One who buys poor, old, worn-out things to sell again at a greater price. Du Cange.

AUCTIONEER. A person authorized or licensed by law to sell lands or goods of other persons at public auction; one who sells at auction. City of Chicago v. Ornstein, 323 Ill. 258, 154 N.E. 100, 52 A.L.R. 489; One who sells goods at public auction for another on commission, or for a recompense. State ex rel. Danziger v. Recorder of Mortgages for Parish of Orleans, 206 La. 259, 19 So.2d 129, 132.

*Auctioneers* differ from *brokers,* in that the latter may both buy and sell, whereas auctioneers can only sell; also brokers may sell by private contract only, and auctioneers by public auction only. Auctioneers can only sell goods for ready money, but factors may sell upon credit. Wilkes v. Ellis, 2 H. BI. 557; Steward v. Winters, 4 Sandf.Ch. (N. Y.) 590.

AUCTOR. In the Roman law. An auctioneer.

In the civil law. A grantor or vendor of any kind.

In old French law. A plaintiff. Kelham.

AUCTORITAS. In the civil law. Authority.

In old European law. A diploma, or royal charter. A word frequently used by Gregory of Tours and later writers. Spelman.

AUCTORITATES PHILOSOPHORUM, MEDICORUM, ET POETARUM, SUNT IN CAUSIS ALLEGANDZE ET TENENDJE. The opinions of philosophers, physicians, and poets are to be alleged and received in causes. Co.Litt. 264.

AUCUPIA VERBORUM SUNT JUDICE INDIGNA. Catching at words is unworthy of a judge. Hob. 343. Applied in State v. Flemming, 66 Me. 142, 151, 22 Am.R. 552.

AUDI ALTERAM PARTEM. Hear the other side; hear both sides. No man should be condemned unheard. Broom, Max. 113; L.R. 2 P.C. 106; Lowry v. Inman, 46 N.Y. 119; Shaw v. Stone, 1 Cush. (Mass.) 243.

AUDIENCE. In international law. A hearing; interview with the sovereign. The king or other chief executive of a country grants an audience to a foreign minister who comes to him duly accredited; and, after the recall of a minister, an "audience of leave" ordinarily is accorded to him.

AUDIENCE COURT. In English law. A court belonging to the Archbishop of Canterbury, having jurisdiction of matters of form only, as the confirmation of bishops, and the like. This court has the same authority with the Court of Arches, but is of inferior dignity and antiquity. The Dean of the Arches is the official auditor of the Audience court. The Archbishop of York has also his Audience court.

AUDIENDO ET TERMINANDO. A writ or commission to certain persons to appease and punish any insurrection or great riot. Fitzh.Nat.Brev. 110.

AUDIT, n. The process of auditing accounts; the hearing and investigation had before an auditor. People v. Barnes, 114 N.Y. 317, 20 N.E. 609; An official examination of an account or claim, comparing vouchers, charges, and fixing the balance. Williams v. Tompkins, Tex.Civ.App., 42 S.W.2d 106, 110.

AUDIT, v. To hear; to examine an account; and in a broad sense it includes its adjustment or allowance, disallowance, or rejection. New York Catholic Protectory v. Rockland County, 144 N.Y. S. 552, 556, 159 App.Div. 455. An audience; a hearing; an examination in general; a formal or official examination and authentication of accounts, with witnesses, vouchers, etc. Green-Boots Const. Co. v. State Highway Commission, 165 Oki. 288, 25 P.2d 783.

Sometimes restricted to a mere mathematical calculation or process, but, in its generally accepted sense, includes an investigation and weighing of the evidence and deciding of whether entries in books are true and correct. Lumber Mut. Casualty Ins. Co. of New York v. Horowitz, 1 N.Y.S.2d 191, 193, 165 Misc. 506.

AUDITA QUERELA. The name of a writ constituting the initial process in an action brought by a judgment defendant to obtain relief against the consequences of the judgment, on account of some matter of defense or discharge, arising since its rendition and which could not be taken advantage of otherwise. Barnett v. Gitlitz, 290 Ill.App. 212, 8 N.E.2d 517, 520. May also lie for matters arising before judgment where defendant had no opportunity to raise such matters in defense. Louis E. Bower, Inc., v. Silverstein, 298 Ill.App. 145, 18 N.E.2d 385, 387.

In some states, where the same relief may be obtained by motion, the remedy by motion has superseded the ancient remedy.

AUDITOR. A public officer whose function is to examine and pass upon the accounts and vouchers of officers who have received and expended public money by lawful authority. An officer who examines accounts and verifies the accuracy of the statements therein. Hicks v. Davis, 100 Kan. 4, 163 P. 799.

General

Auditor of the imprest. Any of several officers in the English exchequer, who formerly had the charge of auditing the accounts of the customs, naval and military expenses, etc., now performed by the commissioners for auditing public accounts. Jacob.

Auditor of the receipts. An officer of the English exchequer. 4 Inst. 107.

State auditor. An officer whose business is to examine and certify accounts and claims against the state and to keep an account between the state and its treasurer. State v. Jorgenson, 29 N.D. 173, 150 N.W. 565, 567.

English Law

An officer or agent of the crown, or of a private individual, or corporation, who examines periodically the accounts of under officers, tenants, stewards, or bailiffs, and reports the state of their accounts to his principal.

Practice

An officer (or officers) of the court, assigned to state the items of debit and credit between the parties in a suit where accounts are in question, and exhibit the balance. Campbell v. Crout, 3 R.I. 60.

AUGMENTATION. The increase of the crown's revenues from the suppression of religious houses and the appropriation of their lands and revenues. Also the name of a court (now abolished) erected 27 Hen. VIII., to determine suits and controversies relating to monasteries and abbey-lands. The court was dissolved in the reign of Mary, but the office of augmentations remained long after. Cowell.

A share of the great tithes temporarily granted to the vicars by the appropriators, and made perpetual by statute 29 Car. II. c. 8. The word is used in a similar sense in the Canadian law.

AUGUSTA LEGIBUS SOLUTA NON EST. The empress or queen is not privileged or exempted from subjection to the laws. 1 Bl.Comm. 219; Dig. 1, 3, 31.

AULA. In old English law. A hall, or court; the court of a baron, or manor; a court baron. Spelman.

This word was employed in mediaeval England along with *curia;* it was used of the meetings of the lord's men held there in the same way that the word *court* was used. McIlwain, High Court of Parl. 30.

AULA ECCLESLE. A nave or body of a church where temporal courts were anciently held.

AULA REGIS. (Called also *Aula Regia.)* The king's hall or palace. The chief court of England in early Norman times. It was established by William the Conqueror in his own hall. It was composed of the great officers of state, resident in the palace, and followed the king's household in all his expeditions. See, also, Curia Regis.

AULIC. Pertaining to a royal court.

AULIC COUNCIL. In the old German empire, the personal council of the emperor, and one of the two supreme courts of the empire which decided without appeal. It was instituted about 1502, was modified in 1654, and ceased to exist on the extinction of the German Empire in 1806. The title was also given to the Council of State of the former Emperor of Austria. Cent.Dict.

AULNAGE. See Alnager.

AULNAGER. See Alnager.

AUMEEN. In Indian law. Trustee; commissioner; a temporary collector or supervisor, appointed to the charge of a country on the removal of a zemindar, or for any other particular purpose of local investigation or arrangement.

AUMIL. In Indian law. Agent; officer; native collector of revenue; superintendent of a district or division of a country, either on the part of the government zemindar or renter.

AUMILDAR. In Indian law. Agent; the holder of an office; an intendant and collector of the revenue, uniting civil, military, and financial powers under the Mohammedan government.

AUMONE, SERVICE IN. Where lands are given in alms to some church or religious house, upon condition that a service or prayers shall be offered at certain times for the repose of the donor's soul. Britt. 164.

AUNCEL WEIGHT. In English law. An ancient mode of weighing, described by Cowell as "a kind of weight with scales hanging, or hooks fastened to each end of a staff, which a man, lifting up upon his forefinger or hand, discerneth the quality or difference between the weight and the thing weighed."

AUNT. The sister of one's father or mother, and a relation in the third degree, correlative to niece or nephew. See 2 Comyn, Dig. 474; Dane, Abr. c. 126, a. 3, § 4.

AURA EPILEPTICA. In medical jurisprudence, a term used to designate the sensation of a cold vapor frequently experienced by epileptics before the loss of consciousness occurs in an epileptic fit. Aurentz v. Anderson, 3 Pittsb.R. (Pa.) 311.

AURES. A Saxon punishment by cutting off the ears, inflicted on those who robbed churches, or were guilty of any other theft.

AURUM REGINAZE. Queen's gold. A royal revenue belonging to every queen consort during her marriage with the king.

AUSTRALIAN BALLOT. An official ballot on which the names of all the candidates are printed. Its use is accompanied by safeguards designed to maintain secrecy in voting. The so-called Australian ballot laws, widely adopted in various forms in the United States, have generally been sustained by the courts. 29 C.J.S. p. 224.

AUSTRALIAN WOOL. A fine grade of wool grown in Australia. Federal Trade Commission v. Winsted Hosiery Co., 42 S.Ct. 384, 385, 258 U.S. 483, 66 L.Ed. 729.

AUTER, Autre. L. Fr. Another; other. See Autre.

AUTHENTIC. Genuine; true; real; pure; reliable; trustworthy; having the character and authority of an original; duly vested with all necessary formalities and legally attested; competent, credible, and reliable as evidence. Downing v. Brown, 3 Colo. 590; Woods v. Jastremski, 201 La. 1092, 11 So.2d 4, 8.

AUTHENTIC ACT. In the civil law. An act which has been executed before a notary or public officer authorized to execute such functions, or which is testified by a public seal, or has been rendered public by the authority of a competent magistrate, or which is certified as being a copy of a public register. Nov. 73, c. 2; Cod. 7, 52, 6, 4, 21; Dig. 22, 4; Mossier Acceptance Co. v. Osborne, La. App., 14 So.2d 492, 493.

AUTHENTICATION. In the law of evidence. The act or mode of giving authority or legal authenticity to, a statute, record, or other written instrument, or a certified copy thereof, so as to render it legally admissible in evidence. Voloshin v. Ridenour, C.C.A.Canal Zone, 299 F. 134. Verifications of judgments. Collette v. Hanson, 174 A. 466, 467, 133 Me. 146.

An attestation made by a proper officer by which he certifies that a record is in due form of law, and that the person who certifies it is the officer appointed so to do. Acts done with a view of causing an instrument to be known and identified.

AUTHENTICS. In the civil law. A Latin translation of the Novels of Justinian by an anonymous author; so called because the Novels were translated *entire,* in order to distinguish it from the epitome made by Julian. 1 Mackeldey, Civ. Law, § 72. A collection of extracts made from the Novels by a lawyer named Irnier, which he inserted in the code at the places to which they refer. These extracts have the reputation of not being correct. Merlin, *Répert. Authentique.*

AUTHENTICUM. In the civil law. An original instrument or writing; the original of a will or other instrument, as distinguished from a copy. Dig. 22, 4, 2; Id. 29, 3, 12.

AUTHOR. One who produces, by his own intellectual labor applied to the materials of his composition, an arrangement or compilation new in itself. Lithographic Co. v. Sarony, 4 S.Ct. 279, 111 U.S. 53, 28 L.Ed. 349.

A beginner or mover of anything; hence efficient cause of a thing ; creator ; originator ; a composer, as distinguished from an editor, translator or compiler. Remick Music Corp. v. Interstate Hotel Co. of Neb., D.C.Neb., 58 F.Supp. 523, 531.

AUTHORITIES. Citations to statutes, precedents, judicial decisions, and text-books of the law, made on the argument of questions of law or the trial of causes before a court, in support of the legal positions contended for, or adduced to fortify the opinion of a court or of a text writer upon any question.

AUTHORITY. Permission. People v. Howard, 31 Cal.App. 358, 160 P. 697, 701. Control over, jurisdiction. State v. Home Brewing Co. of Indianapolis, 182 Ind. 75, 105 N.E. 909, 916. Often synonymous with power. State v. District Court of Eighth Judicial Dist. in and for Natrona County, 33 Wyo. 281, 238 P. 545, 548. The power delegated by a principal to his agent. Clark v. Griffin, 95 N.J.Law, 508, 113 A. 234, 235. The lawful delegation of power by one person to another. Rucks-Brandt Const. Co. v. Price, 165 Oki. 178, 23 P.2d 690, 692. Power of agent to affect legal relations of principal by acts done in accordance with principal's manifestations of consent to agent. In re Fitzpatrick's Estate, Sur., 17 N.Y.S.2d 280, 288.

General

Authority by estoppel. Not actual, but apparent only, being imposed on the principal because his conduct has been such as to mislead, so that it would be unjust to let him deny it. Moore v. Switzer, 78 Colo. 63, 239 P. 874, 875. See Apparent Authority.

Authority coupled with an interest. Authority given to an agent for a valuable consideration, or which forms part of a security. See Unger v. Newlin Haines Co., 94 N.J.Eq. 458, 120 A. 331, 335.

Apparent authority. That which, though not actually granted, the principal knowingly permits the agent to exercise, or which he holds him out as possessing. L. E. Mumford Banking Co. v. Farmers' & Merchants' Bank of Kilmarnock, 116 Va. 449, 82 S.E. 112, 118. See Authority by Estoppel.

Express authority. That given explicitly, either In writing or orally. See Express Authority.

General authority. That which authorizes the agent to do everything connected with a particular business. Story, Ag. § 17. It empowers him to bind his principal by all acts within the scope of his employment; and it cannot be limited by any private direction not known to the party dealing with him. Paley, Ag. 199.

Implied authority. Actual authority circumstantially proved. Koivisto v. Bankers' & Merchants' Fire Ins. Co., 148 Minn. 255, 181 N.W. 580, 582. That which the principal intends his agent to possess, and which is implied from the principal's conduct. Moore v. Switzer, 78 Colo. 63, 239 P. 874, 875. It includes only such acts as are incident and necessary to the exercise of the authority expressly granted. Coulson v. Stevens, 122 Miss. 797, 85 So. 83, 85.

Limited authority. Such authority as the agent has when he is bound by precise instructions.

Naked authority. That arising where the principal delegates the power to the agent wholly for the benefit of the former.

Special authority. That which is confined to an individual transaction. Whitehead v. Tuckett, 15 East, 400, 408. Such an authority does not bind the principal, unless it is strictly pursued. Paley, Ag. 202.

Unlimited authority. That possessed by an agent when he is left to pursue his own discretion.

Governmental Law

Legal power; a right to command or to act; the right and power of public officers to require obedience to their orders lawfully issued in the scope of their public duties.

In the English law relating to public administration, an authority is a body having jurisdiction in certain matters of a public nature.

AUTHORITY OF THE COURT. The official power of the court. In re Bassett, 15 N.Y.S.2d 737, 745, 172 Misc. 613.

AUTHORITY TO EXECUTE A DEED. Must be given by deed. Blood v. Goodrich, 9 Wend. (N.Y.) 68, 75, 24 Am.Dec. 121.

AUTHORIZE. To empower; to give a right or authority to act. Board of Com'rs of Sedgwick County v. Toland, 121 Kan. 109, 245 P. 1019, 1021. To clothe with authority, warrant, or legal power. Arkansas & Memphis Ry. Bridge & Terminal Co. v. State, 174 Ark. 420, 295 S.W. 378, 380. To permit a thing to be done in the future. Gray v. Gill, 210 N.Y.S. 658, 660, 125 Misc. 70. It has a mandatory effect or meaning, implying a direction to act. Quality Building & Securities Co. v. Bledsoe, 125 Cal.App. 493, 14 P.2d 128, 132.

"Authorized" is sometimes construed as equivalent to "permitted"; Crecelius v. Chicago, M. & St. P. Ry. Co., 274 Mo. 671, 205 S.W. 181, 186; and sometimes as equivalent to "directed"; U. S. Sugar Equalization Board v. P. De Ronde & Co., C. C.A.Del., 7 F.2d 981, 986; or to similar mandatory language. Catron v. Marron, 19 N.M. 200, 142 P. 380, 382. The word indicates merely possessed of authority; that is, possessed of legal or rightful power, the synonym of which is "competency." Doherty v. Kansas City Star Co., 143 Kan. 802, 57 P.2d 43, 45.

AUTO ACORDADO. In Spanish colonial law. An order emanating from some superior tribunal, promulgated in the name and by the authority of the sovereign. Schm.Civil Law, 93.

AUTO LIVERY SERVICE. The business of furnishing for hire an automobile with a chauffeur, the car to be driven where the hirer directs. The term is also applied to the business of leasing driverless cars. See Collette v. Page, 44 R.I. 26, 114 A. 136, 18 A.L.R. 74.

See Automobile; Drive it Yourself Cars.

AUTO-OPTIC EVIDENCE. An exhibit of a thing offered before jury as evidence to be seen through jury's own eyes. Johnson v. State, 139 Tex.Cr.R. 279, 139 S.W.2d 579, 581. See, also, Autoptic Proference.

AUTO STAGE. A motor vehicle used for the purpose of carrying passengers, baggage, or freight on a regular schedule of time and rates. State v. Ferry Line Auto Bus Co., 99 Wash. 64, 168 P. 893, 894. See Automobile.

AUTOCRACY. The name of an unlimited monarchical government. A government at the will of one man, (called an "autocrat,") unchecked by constitutional restrictions or limitations.

AUTOGRAPH. One's handwriting.

AUTOGRAPHIC. Self-writing or self-recording. In re Autographic Register Co., Cust. & Pat.App., 39 F.2d 718.

AUTOMATIC. Having inherent power of action or motion; self-acting or self-regulating; mechanical. American Roll Gold Leaf Co. v. W. H. Coe Mfg. Co., C.C.A.R.I., 212 F. 720, 724.

AUTOMATISM. In medical jurisprudence, this term is applied to actions or conduct of an individual apparently occurring without will, purpose, or reasoned intention on his part; a condition sometimes observed in persons who, without being actually insane, suffer from an obscuration of the mental faculties, loss of volition or of memory, or kindred affections. "Ambulatory automatism" describes the pathological impulse to purposeless and irresponsible wanderings from place to place often characteristic of patients suffering from loss of memory with dissociation of personality.

AUTOMOBILE. A vehicle for the transportation of persons or property on the highway, carrying its own motive power and not operated upon fixed

tracks. Blashfield's Cyclopedia of Automobile Law, vol. 1, c. 1, § 2.

A wheeled vehicle propelled by gasoline, steam, or electricity. Stanley v. Tomlin, 143 Va. 187, 129 S.E. 379, 382. A self-propelled vehicle suitable for use on a street or roadway. State v. Freels, 136 Tenn. 483, 190 S.W. 454; A vehicle designed mainly for the transportation of persons, equipped with an internal combustion, hydrocarbon vapor engine furnishing the motive power and forming a structural portion thereof. American-La France Fire Engine Co. v. Riordan, C.C.A.N.Y., 6 F.2d 964, 967. It is generic term, covering both trucks and passenger cars. Wiese v. Polzer, 212 Wis. 337, 248 N.W. 113, 116.

For "Auto Stage," "Family Automobile Doctrine," "Family Car Doctrine," and "Family Purpose Doctrine," see those titles.

Etymologically, the term might include any self-propelled vehicle, as an electric street car, or a motor boat, but in popular and legal usage it is confined to a vehicle for the transportation of persons or property on terrestrial highways, carrying its own motive power and not operated upon fixed tracks. Bethlehem Motors Corporation v. Flynt, 178 N.C. 399, 100 S.E. 693, 694. Synonymous with "motor vehicle." State v. Ferry Line Auto Bus Co., 99 Wash. 64, 168 P. 893, 894. "Car" as substitute or synonym. Monroe's Adm'r v. Federal Union Life Ins. Co., 251 Ky. 570, 65 S.W.2d 680, 681.

Taxicabs included. Navy Gas & Supply Co. v. Schoech, 105 Colo. 374, 98 P.2d 860, 864, 126 A.L.R. 1225. Trolley vehicles or trolley busses excluded. City of Dayton v. Lie Brosse, 62 Ohio St. 232, 23 N.E.2d 647, 650.

AUTOMOBILE GUEST. A person who is received and entertained in the automobile of another. Chanson v. Morgan's Louisiana & T. R. & S. S. Co., 18 La.App. 602, 136 So. 647, 649. Linn v. Nored, Tex.Civ.App., 133 S.W.2d 234, 237.

AUTONOMY. The political independence of a nation; the right (and condition) of power of self-government; the negation of a state of political influence from without or from foreign powers. Lieber, Civ.Lib.; Green v. Obergfell, 121 F.2d 46, 57, 73 App.D.C. 298.

AUTOPSY. The dissection of a dead body for the purpose of inquiring into the cause of death. Pub. St.Mass.1882, p. 1288. Sudduth v. Insurance Co., C.C.Ky., 106 F. 823. A post mortem examination to determine the cause, seat, or nature of a disease. E. 0. Painter Fertilizer Co. v. Boyd, 93 Fla. 354, 114 So. 444, 445.

AUTOPTIC PROFERENCE. Proffering or presenting in open court of articles for observation or inspection of the tribunal. Kabase v. State, 31 Ala.App. 77, 12 So.2d 758, 764.

AUTRE. Fr. Another.

AUTRE ACTION PENDANT. In pleading. Another action pending. A species of plea in abatement. 1 Chit.Pl. 454.

AUTRE DROIT. In right of another, *e. g.,* a trustee holds trust property in right of his *cestui que trust.* A *prochein amy* sues in right of an infant. 2 Bl.Comm. 176.

AUTRE VIE. Another's life. A person holding an estate for or during the life of another is called a tenant *"pur autre vie,"* or *"pur terme d'autre vie."* Litt. § 56; 2 Bl.Comm. 120. See Estate Pur Autre Vie.

AUTREFOIS. L. Fr. At another time; formerly; before; heretofore.

AUTREFOIS ACQUIT. Fr. Formerly acquitted. In criminal law. The name of a plea in bar to a criminal action, stating that the defendant has been once already indicted and tried for the same alleged offense and has been acquitted. Simco v. State, 9 Tex.App. 348; State v. Bilton, 156 S.C. 324, 153 S.E. 269, 272.

AUTREFOIS ATTAINT. In criminal law. Formerly attainted. A plea that the defendant has already been attainted for one felony, and therefore cannot be criminally prosecuted for another. 4 Bl.Comm. 336; 12 Mod. 109; R. & R. 268. This is not a good plea in bar in the United States, nor in England in modern law. 1 Bish.Cr.L. § 692; Singleton v. State, 71 Miss. 782, 16 So. 295, 42 Am. St.Rep. 488.

AUTREFOIS CONVICT. Fr. Formerly convicted. In criminal law. A plea by a criminal in bar to an indictment that he has been formerly convicted of the same crime. 4 Bl.Comm. 336; 4 Steph.Comm. 404.

AUXILIARY. Aiding; attendant on; ancillary *(q.* v.) ; as, an auxiliary bill in equity, an auxiliary receiver. Buckley v. Harrison, 31 N.Y.S. 1001, '10 Misc. 683; Bowman v. Stark, Tex.Civ.App., 185 S.W. 921, 924. Synonymous with "subsidiary." Baker v. Fenley, 128 S.W.2d 295, 298, 233 Mo.App. 998.

AUXILIATOR. Lat. Helper or assistant; the word is closely related to the English word auxiliary. Esta Co. v. Burke, D.C.Pa., 257 F. 743, 746.

AUXILIUM. In feudal and old English law. Aid; compulsory aid, hence a tax or tribute; a kind of tribute paid by the vassal to his lord, being one of the incidents of the tenure by knight's service. Spelman; Fitzh.Nat.Brev. 62.

AUXILIUM AD FILIUM MILITEM FACIENDUM ET FILIAM MARITANDAM. An ancient writ which was addressed to the sheriff to levy compulsorily an aid towards the knighting of a son and the marrying of a daughter of the tenants *in capite* of the crown.

AUXILIUM CURVE. In old English law. A precept or order of court citing and convening a party, at the suit and request of another, to warrant something. Kenn.Par.Ant. 477.

AUXILIUM REGIS. In English law. The king's aid or money levied for the royal use and the public service, as taxes granted by parliament. A subsidy paid to the king. Spelman.

AUXILIUM VICE COMITI. An ancient duty paid to sheriffs. Cowell.

AVAIL OF MARRIAGE. In feudal law. The right of marriage, which the lord or guardian in chivalry had of disposing of his infant ward in matrimony. A guardian in socage had also the same right, but not attended with the same advantage. 2 Bl.Comm. 88.

In Scotch law. A certain sum due by the heir of a deceased ward vassal, when the heir became of marriageable age. Ersk.Inst. 2, 5, 18.

AVAILABILITY FOR WORK. Within Unemployment Compensation Law requires no more than availability for suitable work which claimant has no good cause for refusing. Hagadone v. Kirkpatrick, 66 Idaho 55, 154 P.2d 181, 182.

AVAILABLE. Suitable; usable. Lively v. American Zinc Co. of Tennessee, 137 Tenn. 261, 191 S. W. 975, 979; Having sufficient force or efficacy; effectual. Pittsburgh, C., C. & St. L. Ry. Co. v. Broderick, 56 Ind.App. 58, 102 N.E. 887, 891.

AVAILABLE MEANS. This phrase, among mercantile men, is a term well understood to be anything which can readily be converted into money; but it is not necessarily or primarily money itself. McFadden v. Leeka, 48 Ohio St. 513, 28 N.E. 874; Benedict v. Huntington, 32 N.Y. 224; Brigham v. Tillinghast, 13 N.Y. 218.

AVAILS. Profits, proceeds, or use. In re Coughlin's Estate, 53 N.D. 188, 205 N.W. 14, 16; Cordes v. Harding, 27 Cal.App. 474, 150 P. 650, 651. With reference to wills, it means the *corpus* or proceeds of the estate after the payment of the debts. 1 Amer. & Eng.Enc.Law, 1039. See Allen v. De Witt, 3 N.Y. 279; McNaughton v. McNaughton, 34 N.Y. 201.

AVAL. In French law. The guaranty of a bill of exchange; so called because usually placed at the foot or bottom *(aval)* of the bill. Story, Bills, §§ 394, 454. 11 Harv.L.Rev. 55.

In Canadian law. The act of subscribing one's signature at the bottom of a promissory note or of a bill of exchange; properly an act of suretyship, by the party signing, in favor of the party to whom the note or bill is given. 1 Low.Can. 221; 9 Low.Can. 360.

AVANTURE. L. Fr. Chance; hazard; mischance.

AVARIA, AVARIE. Average; the loss and damage suffered in the course of a navigation. Poth. Mar.Louage, 105.

AVENAGE. A certain quantity of oats paid by a tenant to his landlord as rent, or in lieu of some other duties. Jacob, L.Dict.

AVENTURE, or ADVENTURE. A mischance causing the death of a man, as where a person is suddenly drowned or killed by any accident, without felony. Co.Litt. 391; Whishaw.

AVENUE. Any broad passageway, bordered on each side by trees. Greene *v.* Helme, 94 Vt. 392, 111 A. 557, 559. It may be synonymous with "street" but not with "boulevard." City of St. Louis v. Breuer, Mo.Sup., 223 S.W. 108, 110.

"Street," "avenue," "road," "public road," "county road," and "public highway" are used indiscriminately in legislation and judicial decisions. "Street" or "avenue" commonly applies to a public highway in a village, town, or city and "road" to a suburban highway, but there may be "roads" in a city or town and "streets" and "avenues" in the country. City of Spokane v. Spokane County, 179 Wash. 130, 36 P.2d 311, 313.

AVER. L. Fr. To have.

Aver et tener. In old conveyancing. To have and to hold.

AVER, v. In pleading. To declare or assert; to set out distinctly and formally; to allege.

In old pleacl:ng. To avouch or verify. Litt. § 691; Co.Litt. 362b. To make or prove true; to make good or justify a plea.

AVER, n. In old English and French. Property; substance, estate and particularly live stock or cattle; hence a working beast; a horse or bullock. Cowell; Kelham.

Aver corn. A rent reserved to religious houses, to be paid in corn. Corn drawn by the tenant's cattle. Cowell.

Aver land. In feudal law. Land plowed by the tenant for the proper use of the lord of the soil. Blount.

Aver penny. Money paid towards the king's averages or carriages, and so to be freed thereof. Termes de la Ley.

Aver silver. A custom or rent formerly so called. Cowell.

AVERA. A day's work of a ploughman, formerly valued at eight pence. Jacob, L.Dict.

AVERAGE. A mean proportion, medial sum or quantity, made out of unequal sums or quantities. Brisendine v. Skousen Bros., 48 Ariz. 416, 62 P.2d 326, 329, 112 A.L.R. 1089; Long v. Ottumwa Ry. & Light Co., 162 Iowa, 11, 142 N.W. 1008, 1015.

In ordinary usage the term signifies the mean between two or more quantities, measures, or numbers. If applied to something which is incapable of expression in terms of measure or amount, it signifies that the thing or person referred to is of the ordinary or usual type.

Average charges. "Average charges for toll and transportation" are understood to mean, and do mean, charges made at a mean rate, obtained by dividing the entire receipts for toll and trans. portation by the whole quantity of tonnage carried, reduced to a common standard of tons moved one mile. Hersh v. Railway Co., 74 Pa. 190.

Average prices. Such as are computed on all the prices of any articles sold within a certain pea riod or district.

*General average* (also called "gross") consists of expense purposely incurred, sacrifice made, or damage sustained for the common safety of the vessel, freight, and cargo, or the two of them, at risk, and is to be contributed for by the several

interests in the proportion of their respective values exposed to the common danger, and ultimately surviving, including the amount of expense, sacrifice, or damage so incurred in the contributory value. Star of Hope v. Annan, 9 Wall. 203, 19 L. Ed. 638; *Lex Rhodia,* Dig. 14, 2, 1.

"General average" is a contribution by the several interests engaged in a maritime venture to make good the loss of one of them for the voluntary sacrifice of a part of the ship or cargo to save the residue of the property and the lives of those on board, or for extraordinary expenses nec essarily incurred for the common benefit and safety of all. California Canneries Co. v. Canton Ins. Office, 25 Cal.App. 303, 143 P. 549, 553. The law of general average is part of the maritime law, and not of the municipal law, and applies to maritime adventures only. Ralli v. Troop, 157 U.S. 386, 15 S.Ct. 657, 39 L.Ed. 742.

Gross average. More commonly called "general average" ( *q. v.).* Where loss or damage occurs to a vessel or its cargo at sea, *average* is the adjustment and apportionment of such loss between the owner, the freight, and the cargo, in proportion to their respective interests and losses, in order that one may not suffer the whole loss, but each contribute ratably. Coster v. Insurance Co., 2 Wash.C.C. 51, 6 Fed.Cas. 611.

*Particular average* is a loss happening to the ship, freight, or cargo which is not to be shared by contribution among all those interested, but must be borne by the owner of the subject to which it occurs. It is thus called in contradistinction to *general* average. Bargett v. Insurance Co., 3 Bosw. (N.Y.) 395.

*Petty average* denotes such charges and disbursements as, according to occurrences and the custom of every place, the master necessarily furnishes for the benefit of the ship and cargo, either at the place of loading or unloading, or on the voyage; such as the hire of a pilot for conducting a vessel from one place to another, towage, light money, beaconage, anchorage, bridge toll, quarantine and such like. Park, Ins. 100; Le Guidon, c. 5, a. 13; Weyt, de A. 3, 4; Weskett, art. Petty Av.; 2 Phill.Ins. § 1269, n. 1; 2 Arnould, Mar.Ins. 927.

*Simple average* is the same as "particular average" (q. v.).

In maritime law. Loss or damage accidentally happening to a vessel or to its cargo during a voyage. Also a small duty paid to masters of ships, when goods are sent in another man's ship, for their care of the goods, over and above the freight.

In old English law. A service by horse or carriage, anciently due by a tenant to his lord. Cowell. A labor or service performed with working cattle, horses, or oxen, or with wagons and carriages. Spelman.

Stubble, or remainder of straw and grass left in corn-fields after harvest. In Kent it is called "gratten," and in other parts *"roughings."*

AVERIA. In old English law. A term applied to working cattle, such as horses, oxen, etc.

AVERIA CARRUCAE. Beasts of the plow. 3 Bla. Comm. 9; 4 Term, 566.

AVERIIS CAPTIS IN WITHERNAM. A writ granted to one whose cattle were unlawfully distrained by another and driven out of the county in which they were taken, so that they could not be replevied by the sheriff. Reg.Orig. 82.

AVERIUM. Lat. Goods; property. A beast of burden. Spelman, Gloss.

AVERMENT. In pleading. A positive statement of facts, in opposition to argument or inference. 1 Chit.P1. 320; Bacon, Abr. *Pleas,* B.

Averments were formerly said to be general and particular; but only particular averments are found in modern pleading. 1 Chit.P1. 277.

*Immaterial* and *impertinent averments* (which are synonymous, 5 D. & R. 209) are those which need not be made, and, if made, need not be proved. Williamson v. Allison, 2 East, 446; Panton v. Holland, 17 Johns. (N.Y.) 92, 8 Am.Dec. 369.

*Negative averments* are those in which a negative is used.

*Particular averments* are the assertions of particular facts.

*Unnecessary averments* are statements of matters which need not be alleged, but which, if al. leged, must be proved. Carth. 200.

In old pleading. An offer to prove a plea, or pleading. The concluding part of a plea, replication, or other pleading, containing new affirmative matter, by which the party offers or declares himself "ready to *verify."*

AVERRARE. In feudal law. A duty required from some customary tenants, to carry goods in a wagon or upon loaded horses. Jacob, L.Dict.

AVERSIO. In the civil law. An averting or turning away. A term applied to a species of sale in gross or bulk.

Letting a house altogether, instead of in chain bers. 4 Kent, Comm. 517.

AVERSIO PERICULI. A turning away of peril. Used of a contract of insurance. 3 Kent, Comm. 263.

AVERUM. Goods, property, substance; a beast of burden. Spelman.

AVET. A term used in the Scotch law, signifying to abet or assist. Tomlin, Diet.

AVIA. In the civil law. A grandmother. Inst. 3, 6, 3.

AVIATICUS. In the civil law. A grandson.

AVIATION. The art of flying, especially the management of airplanes; the act, art or science of flying by mechanical means, especially with machines heavier than air. Massachusetts Protective Ass'n v. Bayersdorfer, C.C.A.Ohio, 105 F. 2d 595, 597; Spychala v. Metropolitan Life Ins. Co., 339 Pa. 237, 13 A.2d 32, 33.

AVIATION, ENGAGED EN. The phrase "engaged in aviation" within the meaning of an insurance policy denotes the act of flying in the air in a machine heavier than air, whether piloting or riding as a passenger. Masonic Acc. Ins. Co. v. Jackson, Ind.App., 147 N.E. 156. See Aeronautics.

AVIZANDUM. In Scotch law. To make *avizandum* with a process is to take it from the public court to the private consideration of the judge. Bell.

AVOCAT. Fr. An advocate; a barrister.

AVOCATION. A calling away, a diversion, suggesting idea of smaller affairs of life, or occasional employments as distinguished from one's ordinary or principal occupation. Bullitt v. Delaware Bus Co., Del., 180 A. 519, 522, 7 W.W.Harr. 62; a subordinate or occasional occupation. Mutual Life Ins. Co. of New York v. Enecks, 41 Ga. App. 644, 154 S.E. 198, 199.

AVOID. To annul; cancel; make void; to destroy the efficacy of anything. To evade; escape. Graves v. Apt, 233 Mass. 587, 124 N.E. 432, 433. But it has no sinister meaning, and does not imply subterfuge or artifice in escape. Booth v. Scott, 276 Mo. 1, 205 S.W. 633, 639.

AVOIDABLE CONSEQUENCES, DOCTRINE OF. Doctrine imposes duty on person injured to minimize damages. Reavis v. Raylor, Tex.Civ.App., 162 S.W.2d 1030, 1037; Lips v. Opp, 96 P.2d 865, 867, 150 Kan. 745.

AVOIDANCE. A making void, useless, empty, or of no effect; annulling, cancelling; escaping or evading.

English Ecclesiastical Law

The term describes the condition of a benefice when it has no incumbent.

Parliamentary Language

Avoidance of a decision signifies evading or superseding a question, or escaping the coming to a decision upon a pending question. Holthouse.

Pleading

The allegation or statement of new matter, in opposition to a former pleading, which, admitting the facts alleged in .such former pleading, shows cause why they should not have their ordinary legal effect. Mahaiwe Bank v. Douglass, 31 Conn. 175. See Confession and Avoidance.

AVOIRDUPOIS. The name of a system of weights (sixteen ounces to the pound) used in weighing articles other than medicines, metals, and precious stones; so named in distinction from the Troy weight.

AVOUCELER. The calling upon a warrantor of lands to fulfill his undertaking. See Voucher.

AVOUE. In French and Canadian law. A barrister, advocate, solicitor, or attorney. An officer charged with representing and defending parties before the tribunal to which he is attached. Duverger.

AVOW. In pleading. To acknowledge and justify an act done. 3 Bla.Comm. 150. To make an avowry. Tleeta, 1.1, c. 4, Cunningham, Dict. See Avowry; Justification.

For example, when replevin is brought for a thing distrained, and the party taking claims that he had a right to make the distress, he is said to avow. Newell Mill Co. v. Muxlow, 115 N.Y. 170, 21 N.E. 1048.

AVOWAL. An open declaration. Purpose is to enable the court to know what the witness would have stated in answer to the question propounded, and to inform the court what the interrogator would prove contrary to the testimony given at the trial. Fennell v. Frisch's Adm'r., 192 Ky. 535, 234 S.W. 198 (1921) ; Robertson v. Commonwealth, 269 Ky. 317, 107 S.W.2d 292 ,(1937). See Clay, Kentucky Practice, Rule 43.10. Fed.R.Civ.P. 43 (c).

AVOWANT. One who makes an avowry.

AVOWEE. In ecclesiastical law. An advocate of a church benefice.

AVOWRY. A pleading in the action of replevin, by which the defendant *avows,* that is, acknowledges, the taking of the distress or property complained of, where he took it in his own right, and sets forth the reason of it; as for rent in arrear, damage done, etc. 3 Bl.Comm. 149; 1 Tidd Pr. 645. L. A. W. Acceptance Corporation v. Chernick, 143 A. 783, 784, 49 R.I. 434.

Avowry is the setting forth, as in a declaration, the nature and merits of the defendant's case, showing that the distress taken by him was lawful, which must be done with such sufficient authority as will entitle him to a *retorno habendo.* Wilhem v. Boyd, 172 Md. 79, 190 A. 823, 826.

An avowry must be distinguished from a *justification.* The former species of plea admits the plaintiff's ownership of the property, but alleges a right in the defendant sufficient to warrant him in taking the property and which still subsists. A justification, on the other hand, denies that the plaintiff had the right of property or possession in the subject-matter, alleging it to have been in the defendant or a third person, or avers a right sufficient to warrant the defendant in taking it, although such right has not continued in force to the time of making answer. See 2 W.Jones, 25.

AVOWTERER. In English law. An adulterer with whom a married woman continues in adultery. Termes de la Ley.

AVOWTRY. In old English law. Adultery. Termes de la Ley.

AVULSION. The removal of a considerable quantity of soil from the land of one man, and its deposit upon or annexation to the land of another, suddenly and by the perceptible action of water. 2 Washb.Real Prop. 452; Wharton. Rees v. McDaniel, 115 Mo. 145, 21 S.W. 913; Schwartzstein v. B. B. Bathing Park, 197 N.Y.S. 490, 492, 203 App. Div. 700; Conkey v. Knudsen, 143 Neb. 5, 8 N.W. 2d 538, 542.

A sudden abandonment of an old channel and the crea, tion of a new one. Harper v. Holston, 119 Wash. 436, 205 P. 1062, 1064.

Where running streams are the boundaries between states, the same rule applies as between private proprietors, and, if the stream from any cause, natural or artificial, suddenly leaves its old bed and forms a new one by the process known as "avulsion," the resulting change of channel works no change of boundary, which remains in the middle of the old channel though no water may be

flowing in it and irrespective of subsequent changes in the new channel. State of Arkansas v. State of Tennessee, 246 U.S. 158, 38 S.Ct. 301, 304, 62 L.Ed. 638, L.R.A.1918D, 258; Stull v. U. S., C.C.A.Neb., 61 F.2d 826, 830.

To constitute "avulsion," rather than "accretion," so as to preclude change in boundary between riparian owners, it is not necessary that soil washed away be identifiable; it being sufficient that change is so sudden that owner of land washed away is able to point out approximately as much land added to opposite bank as he had washed away. 60 Okl.St.Ann. §§ 335, 336. Goins v. Merryman, 183 Old. 155, 80 P.2d 268.

See Accretion; Alluvion; Reliction.

AVUNCULUS. In the civil law. A mother's brother. 2 Bl.Comm. 230. *Avunculus magnus,* a great-uncle. *Avunculus major,* a great-grandmother's brother. *Avunculus maximus,* a great-great-grandmother's brother. See Dig. 38, 10, 10; Inst. 3, 6, 2.

AVUS. In the civil law. A grandfather. Inst. 3, 6, 1.

AWAIT. Used in old statutes to signify a lying in wait, or waylaying.

AWARD, v. To grant, concede, or adjudge to. To give or assign by sentence or judicial determination. Hobson v. Superior Court of Tulare County, 69 Cal.App. 60, 230 P. 456, 457. Thus, a jury *awards* damages; the court *awards* an injunction. Starkey v. Minneapolis, 19 Minn. 206 (Gil. 166). One *awards* a contract to a bidder. Jackson v. State, 194 Ind. 130, 142 N.E. 1, 2, (holding that a finding that a contract was "awarded to" a bidder meant it was entered into with all required legal formalities).

AWARD, n. The decision or determination rendered by arbitrators or commissioners, or other private or extrajudicial deciders, upon a controversy submitted to them; also the writing or document embodying such decision. Keiser v. Berks County, 253 Pa. 167, 97 A. 1067, 1068.

Under Workmen's Compensation Acts, the term may be used in the above sense, as signifying a decision or determination of the Industrial Board, or some equivalent body. Frankfort General Ins. Co. v. Conduitt, 74 Ind.App. 584, 127 N.E. 212, 215. It may also be used to refer to the amount of compensation fixed by the board, an "award" being an amount fixed by arbitration. Odrowski v. Swift & Co., 99 Kan. 163, 162 P. 268, 269. Hence, a compensation agreement, which is not approved by the Industrial Board, is not an award. Bruce v. Stutz Motor Car Co. of America, 83 Ind.App. 257, 148 N.E. 161, 162.

A judgment, sentence, or final decision. Higginbotham v. State, 20 Ala.App. 159, 101 So. 166. A finding or judgment based upon an appraisement. Riddell v. Rochester German Ins. Co. of New York, 36 R.I. 240, 89 A. 833, 835. See Arbitration.

AWAY-GOING CROP. A crop sown before the expiration of a tenancy, which cannot ripen until after its expiration to which, however, the tenant is entitled. Broom, Max. 412; Miller v. Gray, Tex. Civ.App., 108 S.W.2d 265, 267, 268.

AWM. Also aum or *awme.* In old English statutes. A measure of wine, or vessel containing forty gallons.

AWN-HINDE. See Third-Night-Awn-Hinde.

AXIOM. In logic. A self-evident truth; an indisputable truth.

AXMINSTER. The trade-name of a certain kind of rug. The term now generally includes the machine-made product as well as the handmade. Beuttell & Sons v. U. S., 8 Ct.Cust.App. 409, 412.

AYANT CAUSE. In French law, and also in Louisiana, this term signifies one to whom a right has been assigned, either by will, gift, sale, exchange, or the like; an assignee. An *avant cause* differs from an heir who acquires the right by inheritance. 8 Toullier, n. 245.

AYLE. See Aiel.

AYRE. In old Scotch law. Eyre; a circuit or iter.

AYUNTAMIENTO. In Spanish law. A congress of persons; the municipal council of a city or town. 1 White, Coll. 416; Friedman v. Goodwin, 9 Fed.Cas. 818; Strother v. Lucas, 12 Pet. 442, 9 L.Ed. 1137, notes.

AZURE. A term used in heraldry, signifying blue.

B. The second letter of the English alphabet; is used to denote the second of a series of pages, notes, etc.; the subsequent letters, the third and following numbers.

B. C. An abbreviation for "before Christ," "bail. court," "bankruptcy cases," and "British Columbia."

B. D. S. A. Business and Defense Services Administration.

B. E. An abbreviation for "Baron of the Court of Exchequer."

B. F. An abbreviation for bonum *factum,* a good or proper act, deed, or decree; signifies "approved."

B. L. S. Bureau of Labor Statistics.

B. R. An abbreviation for *Bancus Regis,* (King's Bench,) or *Bancus Regina* (Queen's Bench.) It is frequently found in the old books as a designation of that court. In more recent usage, the initial letters of the English names are ordinarily employed, *i. e.,* K. B. or Q. B.

B. S. *Bancus Superior,* that is, upper bench.

B— S—. Designation of statements of another as b— s— carried the implications that they were absurd and fanciful. People v. Nitti, 312 Ill. 73, 143 N.E. 448, 456.

BABBITT. To line or furnish with "babbitt metal," which is a soft white anti-friction metal, of varying compositions, or any of several alloys similarly used. Ingersol v. National Sash & Door Factory, 134 La. 19, 63 So. 609, 610.

"BABY ACT." A plea of infancy, interposed for the purpose of defeating an action upon a contract made while the person was a minor, is vulgarly called "pleading the baby act.- By extension, the term is applied to a plea of the statute of limitations.

BACHELERIA. In old records. Commonalty or yeomanry, in contradistinction to baronage.

BACHELOR. One who has taken the first degree (baccalaureate) in the liberal arts and sciences, or in law, medicine, or divinity, in a college or university.

A man who has never been married.

A kind of inferior knight; an esquire.

BACK, v. To indorse; to sign on the back; to sign generally by way of acceptance or approval. Where a warrant issued in one county is presented to a magistrate of another county and he signs it for the purpose of making it executory in his county, he is said to "back" it. 4 Bl.Comm. 291. This custom prevails in England, Scotland, and some of the United States. So an indorser of a note or bill is colloquially said to "back" it. Seabury v. Hungerford, 2 Hill (N.Y.) 80.

BACK, *adv.* To the rear; backward; in a reverse direction. Also, in arrear.

BACK CARRY. In forest law, the crime of having, on the back, game unlawfully killed. See Backbear.

BACK LANDS. A term of no very definite import, but generally signifying lands lying back from (not contiguous to) a highway or a water course. See Ryerss v. Wheeler, 22 Wend. (N.Y.) 150.

BACK TAXES. Those assessed for a previous year or years and remaining due and unpaid from the original tax debtor. M. E. Church v. New Orleans, 107 La. 611, 32 So. 101.

BACKADATION. See Backwardation.

BACKBEAR. In forest law. Carrying on the back. One of the cases in which an offender against vert and venison might be arrested, as being taken with the mainour, or manner, or found carrying a deer off on his *back.* Manwood; Cowell.

BACKBEREND (also Backberende). Sax. Bearing upon the back or about the person. Applied to a thief taken with the stolen property in his immediate possession. Bract. 1, 3, tr. 2, c. 32. Used with *handhabend,* having in the hand.

BACKBOND. A bond of indemnification given to a surety.

In Scotch law. A deed attaching a qualification or condition to the terms of a conveyance or other instrument. This deed is used when particular circumstances render it necessary to express in a separate form the limitations or qualifications of a right. Bell. The instrument is equivalent to a declaration of trust in English conveyancing.

BACKING. Indorsement; indorsement by a magistrate. Gondas v. Gondas, 99 N.J.Eq. 473, 134 A. 615, 617.

BACKING A WARRANT. See Back.

BACK-SEAT DRIVER. A highly nervous passenger whether sitting in rear or by driver, who by unwarranted advice and warnings interferes in careful operation of automobile. Winters v. York Motor Express Co., 116 Pa.Super. 421, 176 A. 812, 815.

BACKSIDE. In English law. A term formerly used in conveyances and also in pleading; it imports a yard at the back part of or behind a house, and belonging thereto.

BACKWARDATION (also called Backadation). In the language of the stock exchange, this term signifies a consideration paid for delay in the delivery of stock contracted for, when the price *is* lower for time than for cash. Dos Passos, Stock-Brok. 270.

BACKWARDS. In a policy of marine insurance, the phrase "forwards and backwards at sea" means from port to port in the course of the voyage, and not merely from one terminus to the other and back. 1 Taunt. 475.

BACKWATER. Water in a stream which, In consequence of some dam or obstruction below, is detained or checked in its course, or flows back. Webster v. North Poudre Irr. Co., 74 Colo. 565, 223 P. 36. Water caused to flow backward from a steam-vessel by reason of the action of its wheels or screw.

BACULUS. A rod, staff, or wand, used in old English practice in making livery, of seisin where no building stood on the land, (Bract. 40;) a stick or wand, by the erection of which on the land involved in a real action the defendant was summoned to put in his appearance; this was called *"baculus nuntiatorius."* 3 B1.Comm. 279.

BAD. Vicious, evil, wanting in good qualities; the reverse of good. Davis v. Pennsylvania Co. for Insurances on Lives and Granting Annuities, 337 Pa. 456, 12 A.2d 66, 68. Defective, faulty, inferior, or imperfect. Kniffley v. Reid, 152 S.W. 2d 615, 616, 287 Ky. 212. The technical word for unsoundness in pleading.

BAD BEHAVIOR. Where a judgment in a cram. inal case has been suspended on condition of good behavior, the term "good behavior" means conduct that is authorized by law, and "bad behavior" means conduct such as the law will punish. State v. Hardin, 183 N.C. 815, 112 S.E. 593, 594.

BAD DEBT. Generally speaking, one which *is* uncollectible.

BAD FAITH. The opposite of "good faith," generally implying or involving actual or constructive fraud, or a design to mislead or deceive another, or a neglect or refusal to fulfill some duty or some contractual obligation, not prompted by an honest mistake as to one's rights or duties, but by some interested or sinister motive. State v. Griffin, 100 S.C. 331, 84 S.E. 876, 877; Penn Mut. L. *Ins.* Co. v. Mechanics' Savings Bank & Trust Co., C.C.A.Tenn., 73 F. 653, 19 C.C.A. 316, 38 L.R.A. 33, 70; Spiegel v. Beacon Participations, 297 Mass. 398, 8 N.E.2d 895, 907.

BAD MOTIVE. Intentionally doing a wrongful act knowing at the time that it is wrongful. Luhmann v. Schaefer, Mo.App., 142 S.W.2d 1088, 1090; Davis v. Nash Central Motors, Mo.App., 332 S.W. 2d 475, 480.

BAD PLACE. Under a contract requiring the employer to timber all bad places in the mine unless caused by the miner's negligence, a "bad place" was a place in the roof which could not be made reasonably safe by the ordinary propping usually done by the miner himself. W. G. Duncan Coal Co. v. Thompson's Adm'r, 157 Ky. 304, 162 S.W. 1139, 1140.

BAD TITLE. One which conveys no property to the purchaser of the estate; one which is so radically defective that it is not marketable, and hence such that a purchaser cannot be legally compelled to accept it. Heller v. Cohen, 15 Misc. 378, 36 N.Y.S. 668.

BADGE. A mark or cognizance worn to show the relation of the wearer to any person or thing; the token of anything; a distinctive mark of office or service.

BADGE OF FRAUD. A term used relatively to the law of fraudulent conveyances made to hinder and defraud creditors. It is defined as a fact tending to throw suspicion upon a transaction, and calling for an explanation. Bump, Fraud.Conv. 31; Phelps v. Samson, 113 Iowa, 145, 84 N.W. 1051. It is a suspicious circumstance that overhangs a transaction, or appears on the face of the papers, Toone v. Walker, 115 Okl. 289, 243 Pa. 147, 148. A circumstance which does not alone prove fraud, but which warrants inference of fraud, especially where there is a concurrence of many such badges. Brennecke v. Riemann, Mo., 102 S.W.2d 874, 877, 109 A.L.R. 1214.

Recognized "badges of fraud" include fictitious consideration, false statements as to consideration, transactions different from usual course of doing business, transfer of all of a debtor's property, insolvency, confidential relationship of parties, and transfers in anticipation of suit or execution. Hendrix v. Goldman, Mo., 92 S.W.2d 733, 736.

BADGER. In old English law. One who made a practice of buying corn or victuals in one place, and carrying them to another to sell and make profit by them.

BAG. A sack or satchel. A certain and customary quantity of goods and merchandise in a sack. Wharton. An uncertain quantity of goods and merchandise, from three to four hundred. Jacob.

BAGA. In English law. A bag or purse. Thus there is the petty-bag-office in the common-law jurisdiction of the court of chancery, because all original writs relating to the business of the crown were formerly kept in a little sack or bag, *in* parva *bagel.* 1 Madd.Ch. 4.

BAGAVEL. The citizens of Exeter had granted to them by charter from Edward I. the collection of a certain tribute or toll upon all manner of wares brought to that city to be sold, toward the paving of the streets, repairing of the walls, and maintenance of the city, which was commonly called bagavel, bethugavel and chippinggavel. Antiq. of Exeter.

BAGGAGE. In the law of carriers, this term, comprises such articles of personal convenience or necessity as are usually carried by passengers for their personal use. It includes whatever the passenger takes with him for his personal use or convenience according to the habits or wants of the particular class to which he belongs, either with

reference to the immediate necessities or ultimate purpose of the journey. Texas & P. Ry. Co. v.. Bryant, Tex.Civ.App., 11 S.W.2d 659, 660

Thus, jewelry suitable to the condition in life of the passenger and intended for personal use on the journey is "baggage." Missouri Pac. R. Co. v. Pugh, 157 Ark. 383, 248 S.W. 897. But it is not baggage where carried by a traveler for the use of another or for the purpose of business or sale. Illinois Cent. R. Co. v. Fontaine, 217 Ky. 211, 289 S.W. 263, 266, 52 A.L.R. 1064.

A multitude of objects have been held to be baggage; *e. g.,* razors in a trunk checked by a male passenger, San Antonio & A. P. Ry. Co. v. Green, Tex.Civ.App., 170 S.W. 110, 111, and a thimble carried in her trunk by the mother of two small children, Louisville & N. R. Co. v. Hestle, 200 Ala. 137, 75 So. 885, 887. Other articles have been held not to be baggage, such as stocks and bonds, Jandorf v. Pullman Co., 171 N.Y.S. 321, 322, 104 Misc. 79; a gun and gun case, not connected with the purpose of the trip, House v. Chicago & N. W. Ry. Co., 32 S.D. 209, 142 N.W. 736, 738; and an article for use in housekeeping after the end of a passenger's journey, Louisville & N. R. Co. v. Fletcher, 194 Ala. 257, 69 So. 634, 635.

BAGGAGE CAR. A closed car in a passenger train used to transport the property of the passengers. Ward v. Gulf, M. & N. R. Co., 23 Tenn.App. 533, 134 S.W.2d 917.

BAGGAGE CAR SERVICE. A service rendered in such car in connection with the transportation of passengers by a passenger train movement or its equivalent. Ward v. Gulf, M. & N. R. Co., 23 Tenn.App. 533, 134 S.W.2d 917, 923.

BAHADUM. A chest or coffer. Fleta.

BAIL, v. To procure the release of a person from legal custody, by undertaking that he shall appear at the time and place designated and submit himself to the jurisdiction and judgment of the court.

To deliver the defendant to persons who, in the manner prescribed by law, become security for his appearance in court. To set at liberty a person arrested or imprisoned, on security being taken for his appearance on a day and a place certain, which security is called "bail," because the party arrested or imprisoned is delivered into the hands of those who bind themselves for his forthcoming, (that is, become bail for his due appearance when required,) in order that he may be safely protected from prison. Wharton. Stafford v. State, 10 Tex.App. 49.

To procure release of one charged with an offense by insuring his future attendance in court and compelling him to remain within jurisdiction of court. Manning v. State ex rel. Williams, 190 Okl. 65, 120 P.2d 980, 981.

The object of "bail" in civil cases is either directly or indirectly to secure payment of a debt or performance of other civil duties, while in criminal cases object is to secure appearance of principal before the court when his presence is needed. Johnson v. Shaffer, 64 Ohio App. 236, 28 N.E.2d 765, 767. In its more ancient signification, the word includes the delivery of property, real or personal, by one person to another.

BAIL, n. The surety or sureties who procure the release of a person under arrest, by becoming responsible for his appearance at the time and place designated. Those persons who become sureties for the appearance of the defendant in court.

—Bail above or bail to the action. See Special bail, infra.

—Bail absolute. Sureties whose liability is condiditioned upon the failure of the principal to duly account for money coming to his hands as administrator, guardian, etc.

—Bail below, or bail to the sheriff. See Bail to the sheriff or bail below, *infra.*

—Bail bond. A bond executed by a defendant who has been arrested, together with other persons as sureties, naming the sheriff, constable, or marshal as obligee, in a penal sum proportioned to the damages claimed or penalty denounced, conditioned that the defendant shall duly appear to answer to the legal process in the officer's hands, or shall cause special bail to be put in, as the case may be.

An obligation signed by the accused with sureties, conditioned that the same shall be void on the performance by the accused of such acts as he is required to perform. State v. Wilson, 265 Mo. 1, 175 S.W. 603, 605.

Its purpose is to secure the presence of the one charged in court when his presence is required in order to answer to the charge. State v. Clark, 234 Iowa 338, 11 N.W.2d 722. In criminal cases, a bail bond is a contract under seal, which, from its nature, requires sureties or bail, and therefore differs from a "recognizance," which is a debt or obligation of record, acknowledged before some court or magistrate authorized to take it, with condition to do some particular act, and which need not be executed by the parties. State v. Bradsher, 189 N.C. 401, 127 S.E. 349, 351, 38 A.L.R. 1102. But under the law of Connecticut, "recognizance" and "bail" are interchangeable. National Surety Co. v. Nazzaro, 239 Mass. 341, 132 N.E. 49, 50.

—Bail common. A fictitious proceeding, intended only to express the appearance of a defendant, in cases where special bail is not required. It is put in in the same form as special bail, but the sureties are merely nominal or imaginary persons, as John Doe and Richard Roe. 3 Bl.Comm. 287.

—Bail court. In English law and practice. An auxiliary court of the court of queen's bench at Westminster, wherein points connected more particularly with pleading and practice are argued and determined. Holthouse; Wharton, Law Dict. 2d Lond. ed. It has been abolished.

—Bail dock. Formerly at the Old Bailey, in London, a small room taken from one of the corners of the court, and left open at the top, in which certain malefactors were placed during trial. Cent. Dict.

—Bail in error. That given by a defendant who intends to bring a writ of error on the judgment and desires a stay of execution in the meantime.

—Bail piece. A formal entry or memorandum of the recognizance or undertaking of special bail in civil actions, which, after being signed and acknowledged by the bail before the proper officer, is filed in the court in which the action is pending. 3 Bl.Comm. 291; Worthen v. Prescott, 60 Vt. 68, 11 Atl. 690.

—Bail to the action or bail above. Special bail *(q.* v.).

—Bail to the sheriff or bail below. Persons who undertake that a defendant arrested upon mesne

process in a civil action shall duly appear to answer the plaintiff; such undertaking being in the form of a bond given to the sheriff, termed a "bail bond" *(q. v.)*. 3 Bl.Comm. 290; 1 Tidd, Pr. 221. Sureties who bind themselves to the sheriff to secure the defendant's appearance, or his putting in bail to the action on the return-day of the writ.

"Bail to the sheriff was originally designed to temporarily liberate the defendant from close custody, and to place means in the sheriff's hands to insure the defendant's appearance to answer at the return of the writ. • • • The appearance which was contemplated was not, however, necessarily an actual appearance in person, but by putting in new bail, called bail to the action, special bail, or bail above. This special bail, or bail above, was by recognizance, which was matter of record, and an act of appearance, and by it the bail were bound that if the defendant should be condemned he should pay or render himself a prisoner, and if he did not, that they would pay the condemnation. The undertaking of the ball to the sheriff, or bail below, was wholly different, and was adapted to the specific exigency. It was in the form of a bond to the sheriff, and was conditioned for the defend= ant's appearance at the return of the writ, which meant putting in and perfecting bail above." De Myer v. McGonegal, 32 Mich. 120, 124.

—Civil bail. That taken in civil actions.

—Common bail. Fictitious sureties formally entered in the proper office of the court. See Bail common, *supra.*

—Special bail. Responsible sureties who undertake as bail above. Persons who undertake jointly and severally in behalf of a defendant arrested on mesne process in a civil action that, if he be condemned in the action, he shall pay the costs and condemnation, (that is, the amount which may be recovered against him,) or render himself a prisoner, or that they will pay it for him. 3 Bl. Comm. 291; 1 Tidd, Pr. 245; Sellon, Pr. 137. See Bail to the sheriff or bail below, *supra.*

—Straw bail. Nominal or worthless bail. Irresponsible persons, or men of no property, who make a practice of going bail for any one who will pay them a fee therefor, and who originally, as a mark of their purpose, wore straw in their shoes.

BAIL. Fr. In French and Canadian law. A lease of lands. See Merlin, Repert. *Bail.*

—Bail a cheptel. A contract by which one of the parties gives to the other cattle to keep, feed and care for, the borrower receiving half the profit of increase, and bearing half the loss. Duverger.

—Bail a ferme. A contract of letting lands.

—Bail a longues annêes. A lease for more than nine years; the same as bail emphyteotique (see infra) or an emphyteutic lease.

—Bail it loyer. A contract of letting houses.

—Bail It rente. A contract partaking of the nature of the contract of sale, and that of the contract of lease; it is translative of property, and the rent is essentially redeemable. Clark's Heirs v. Christ's Church, 4 La. 286; Poth. Bail a Rente, 1, 3.

—Bail emphyteotique. An emphyteutic lease; a lease for a term of years with a right to prolong indefinitely; practically equivalent to an alienation. 5 Low. C. 381; 6 Low. C. 58. See Emphyteusis.

BAILABLE. Capable of being bailed; admitting of bail; authorizing or requiring bail.

BAILABLE ACTION. One in which the defendant is entitled to be discharged from arrest only upon giving bond to answer.

BAILABLE OFFENSE. One for which the prisoner may be admitted to bail.

BAILABLE PROCESS. Such as requires the officer to take bail, after arresting the defendant. That under which the sheriff is directed to arrest the defendant and is required by law to discharge him upon his tendering suitable bail as security for his appearance. A *capias ad respondendum* is bailable; not so a *capias ad satisfaciendum.*

BAILEE. In the law of contracts. One to whom goods are bailed; the party to whom personal property is delivered under a contract of bailment. Hotels Statler Co. v. Safier, 103 Ohio St. 638, 134 N.E. 460, 462, 22 A.L.R. 1190. A species of agent to whom something movable is committed in trust for another. Cowart v. State, 16 Ala.App. 119, 75 So. 711, 713; Smith v. State, 78 Okl.Cr. 375, 148 P.2d 206, 208.

BAILEE POLICIES. Floating policies which cover goods while in possession of warehouse without particular description in the policy. Gillespie v. Federal Compress & Warehouse Co., 265 S.W.2d 21, 27, 37 Tenn.App. 476.

BAILIE. In the Scotch law. (1) A magistrate having inferior criminal and civil jurisdiction, similar to that of an alderman, (q. v.; ) (2) an officer appointed to confer infeoffment, *(q.* v.; ) a bailiff, *(q.* v.; ) a server of writs. Bell.

BAILIFF. One to whom some authority, care, guardianship, or jurisdiction is delivered, committed, or intrusted; one who is deputed or appointed to take charge of another's affairs; an overseer or superintendent; a keeper, protector, or guardian; a steward. Spelman. A sheriff's officer or deputy. 1 Bl.Comm. 344. A court attendant, sometimes called a tipstaff.

A magistrate, who formerly administered justice in the parliaments or courts of France, answering to the English sheriffs as mentioned by Bracton.

A person acting in a ministerial capacity who has by delivery the custody and administration of lands or goods for the benefit of the owner or bailor, and is liable to render an account thereof. Co.Litt. 271; Story, Eq.Jur. § 446; West v. Weyer, 18 N.E. 537, 46 Ohio St. 66, 15 Am.St.Rep. 552.

—Bailiff-errant. A bailiff's deputy.

—Bailiffs of franchises. In English law. Officers who perform the duties of sheriffs within liberties

or privileged jurisdictions, in which formerly the king's writ could not be executed by the sheriff. Spelman.

—Bailiffs of hundreds. In English law. Officers appointed over hundreds, by the sheriffs, to collect fines therein, and summon juries; to attend the judges and justices at the assises and quarter sessions; and also to execute writs and process in the several hundreds. 1 Bl.Comm. 345; 3 Steph. Comm. 29; Bract. fol. 116.

—Bailiffs of manors. In English law. Stewards or agents appointed by the lord (generally by an authority under seal) to superintend the manor, collect fines, and quit rents, inspect the buildings, order repairs, cut down trees, impound cattle trespassing, take an account of wastes, spoils, and misdemeanors in the woods and demesne lands, and do other acts for the lord's interest. Cowell.

—High bailiff. An officer attached to an English county court. His duties are to attend the court when sitting; to serve summonses; and to execute orders, warrants, writs, etc. St. 9 & 10 Vict. c. 95, § 33; Poll.C.C.Pr. 16. He also has similar duties under the bankruptcy jurisdiction of the county courts.

—Special bailiff. A deputy sheriff, appointed at the request of a party to a suit, for the special purpose of serving or executing some writ or process in such suit.

BAILIVIA. In old law. A bailiff's jurisdiction, a bailiwick; the same as *bailium*. Spelman. See Bailiwick.

In old English law. A liberty, or exclusive jurisdiction, which was exempted from the sheriff of the county, and over which the lord of the liberty appointed a bailiff with such powers within his precinct as an under-sheriff exercised under the sheriff of the county. Whishaw.

BAILIWICK. A bailivia.

BAILLEUR DE FONDS. In Canadian law. The unpaid vendor of real estate. 1 Low. C. 1, 6; 9 Low. C. 497.

BAILLI. In old French law. One to whom judicial authority was assigned or delivered by a superior.

BAILMENT. A delivery of goods or personal property, by one person to another, in trust for the execution of a special object upon or in relation to such goods, beneficial either to the bailor or bailee or both, and upon a contract, express or implied, to perform the trust and carry out such object, and thereupon either to redeliver the goods to the bailor or otherwise dispose of the same in conformity with the purpose of the trust. Fulcher v. State, 32 Tex.Cr.R. 621, 25 S.W. 625.

A delivery of goods for some purpose, upon a contract, express or implied, that after the purpose has been fulfilled they shall be redelivered to the bailor, or otherwise dealt with according to his direction, or kept until reclaimed. In re George L. Nadell & Co., 294 Mich. 150, 292 N.W. 684, 686. A delivery of something of a personal nature by one party to another to be held according to the purpose or object of the delivery and to be returned or delivered over when that purpose is accomplished. Hardin v. Grant. Tex.Civ.App., 54 S.W.2d 189, 190; Hogan v. O'Brien, 206 N.Y.S. 831, 833, 123 Misc. 865. The term "bailment" is derived from the French word "bailler," meaning "to deliver." It imports a delivery of personal property by one person to another m trust for a specific purpose, with a contract, expressed o implied, that the trust shall be faithfully executed and the property returned or duly accounted for when the specific purpose is accomplished or kept until bailor claims it. Commonwealth v. Polk, 256 Ky. 100, 75 S.W.2d 761, 764.

According to Story, the contract does not necessarily imply an undertaking to redeliver the goods. On the other hand, Blac:istone, although his definition does not include the return, speaks of it in all his examples of bailments as a duty of the bailee; and Kent says that the application of the term to cases in which no return or redelivery to the owner or his agent is contemplated, is extending the definition of the term beyond its ordinary acceptation in English law. A consignment to a factor would be a bailment for sale, according to Story; while according to Kent it would not.

### Classification

Sir William Jones has divided bailments into five sorts, namely: *Depositum,* or deposit; *mandatum,* or commission without recompense; *commodatum,* or loan for use without pay; *pignori acceptum,* or pawn; *locatum,* or hiring, which is always with reward. This last is subdivided into *locatio rei,* or hiring, by which the hirer gains a temporary use of the thing; *locatio operis faciendi,* when something is to be done to the thing delivered; *locatio operis mercium vehendarum,* when the thing is merely to be carried from one place to another. Jones, Bailm, 36.

Lord Holt divided bailments thus:

*(1) Depositum,* or a naked bailment of goods, to be kept for the use of the bailor.

*(2) Commodatum.* Where goods or chattels that are useful are lent to the bailee *gratis,* to be used by him.

(3) Locatio rei. Where goods are lent to the bailee to be used by him for hire.

*(4) Vadium.* Pawn or pledge.

(5) Locatio *operis faciendi.* Where goods are delivered to be carried, or something is to be done about them, for a reward to be paid to the bailee.

*(6) Mandatum.* A delivery of goods to somebody who is to carry them, or do something about them, *gratis.* 2 Ld. Raym. 909.

Another division, suggested by Bouvier as being a better general division for practical purposes, is as follows : *First,* those bailments which are for the benefit of the bailor, or of some person whom he represents; *second,* those for the benefit of the bailee, or some person represented by him; *third,* those which are for the benefit of both parties.

### In General

—Bailment for hire. A contract in which the bailor agrees to pay an adequate recompense for the safe-keeping of the thing intrusted to the custody of the bailee, and the bailee agrees to keep it and restore it on the request of the bailor, in the same condition substantially as he received it, excepting injury or loss from causes for which he is not responsible.

—Bailment for mutual benefit. One in which the parties contemplate some price or compensation in return for benefits flowing from the bailment, necessarily involving an express or implied agreement or undertaking to that effect. Armored Car Service, Inc. v. First Nat. Bank of

Miami, Fla.App., 114 So.2d 431, 434. For example, delivery of automobile to one who, for a consideration, undertakes to repair it. Fox Chevrolet Sales, Inc. v. Middleton, to Use of Farm Bureau Mut. Auto. Ins. Co., 99 A.2d 731, 732, 203 Md. 158, 43 A.L.R.2d 399.

—Actual bailment. One which exists where there is either (a) an "actual delivery," consisting in giving to the bailee or his agent the real possession of the chattel, or ( b) a "constructive delivery," consisting of any of those acts which, although not truly comprising real possession of the goods transferred, have been held by legal construction equivalent to acts of real delivery. Wentworth v. Riggs, 159 App.Div. 899, 143 N.Y.S. 955, 956.

—Constructive bailment. One arising where the person having possession of a chattel holds it under such circumstances that the law imposes upon him the obligation to deliver it to another. Wentworth v. Riggs, 159 App.Div. 899, 143 N.Y.S. 955, 956. See, also, Involuntary bailment, *infra.*

—Gratuitous bailment. Another name for a depositum or naked bailment, which is made only for the benefit of the bailor and is not a source of profit to the bailee. Foster v. Essex Bank, 17 Mass. 499, 9 Am.Dec. 168.

—Involuntary bailment. One arising by the accidental leaving of personal property in the possession of any person without negligence on the part of its owner. Grossman Co. v. White, 52 Okl. 117, 152 P. 816, 817

A "bailment" *Is* created by the element of lawful possession and the duty to act for the thing as the property of another, whether such possession is based on contract in the ordinary sense or not. Foulke v. New York Consol. R. Co., 228 N.Y. 269, 127 N.E. 237, 239, 9 A.L.R. 1384. See Constructive bailment, *supra.*

—Lucrative bailment. One which is undertaken upon a consideration and for which a payment or recompense is to be made to the bailee, or from which he is to derive some advantage. Prince v. Alabama State Fair, 106 Ala. 340, 17 So. 449, 28 L.R.A. 716.

—Bailment lease. A legal metnod by which one desiring to purchase an article but unable to pay therefor at the time, may secure possession thereof with the right to use and enjoy it as long as he pays stipulated rentals and becomes absolute owner after completing such installment payments, on payment of an additional sum which may be nominal. In re Robinson, D.C.Pa., 40 F. Supp. 320, 322, 323.

Bailments as Distinguished from Other Transactions

—Chattel mortgages. A radical distinction between a bailment and a chattel mortgage is that, by a mortgage, the title is transferred to the mortgagee, subject to be revested by performance of the condition, but, in case of a bailment, the bailor retains the title and parts with the possession for a special purpose. Walker v. Staples, 5 Allen (Mass.) 34.

—Debt. The distinction between an obligation to restore the specific thing received, or of returning others of equal value, is the distinction between a "bailment" and a "debt." Alamitos Land Co. v. Texas Co., 11 Cal.App.2d 614, 54 P.2d 489, 491.

—Exchanges. An agreement by which A is to let B have a horse, in consideration that B will let A have another horse, creates an exchange, not a bailment. Austin v. Seligman, C.C.N.Y., 21 Blatchf. 506, 18 Fed. 519.

—Partnerships. Where animals are delivered to be taken care of for a certain time, and at the expiration of that time the same number of animals is to be returned, and any increase is to be enjoyed by both parties, there is a bailment, not a partnership. Simmons v. Shaft, 91 Kan. 553, 138 P. 614, 615.

—Sales. The test of a bailment is that the identical thing is to be returned in the same or in some altered form; if another thing of equal value is to be returned, the transaction is a sale. Sturm v. Boker, 14 S.Ct. 99, 150 U.S. 312, 37 L.Ed. 1093; Borman v. U. S., C.C.A.N.Y., 262 F. 26, 29.

*Conditional sale.* Contemplates that at some time the title shall pass to the purchaser and that he shall pay the purchase price, while a "bailment" contemplates that the title shall not pass to the bailee, but remain in the bailor, and that the property shall be returned to the bailor. Vermont Acceptance Corporation v. Wiltshire, 103 Vt. 219, 153 A. 199, 200, 73 A.L.R. 792.

—Trusts. The passing of the legal title from the owner to the party to whom personal property is delivered distinguishes a "trust" from a bailment. National Cattle Loan Co. v. Ward, 113 Tex. 312, 255 S.W. 160, 164; McIntyre v. Smith, 154 Md. 660, 141 A. 405, 410.

BAILOR. The party who *bails* or delivers goods to another, in the contract of bailment. McGee v. French, 49 S.C. 454, 27 S.E. 487; Story, Bailm. §1 74, 388.

BAIR-MAN. In old Scotch law. A poor insolvent debtor, left bare and naked, who was obliged to swear in court that he was not worth more than five shillings and fivepence.

BAIRN'S PART. In Scotch law. Children's part; a third part of the defunct's free movables, debts deducted, if the wife survive, and a half if there be no relict. See Legitim.

BAIRNS. In Scotch law. A known term, used to denote one's whole issue. Ersk.Inst. 3, 8, 48. But it is sometimes used in *a* more limited sense. Bell.

BAIT. To attack with violence; to provoke and harass. 2 A. & E. Encyc. 63; L.R. 9 Q.B. 380.

BAITING ANIMALS. In English law. Procuring them to be worried by dogs. Punishable on summary conviction, under 12 & 13 Vict. c. 92, 1 3.

BAKER. In its ordinary use respecting a bakery business, *a* generic term including in its scope different services connected with the bakery busi-

ness, such as doing shop service in putting bread in boxes. Futopolus v. Midland Casualty Co., 174 Wis. 208, 182 N.W. 845, 847.

BAKERY. Any place used for the purpose of mixing, compounding, or baking for sale or for purposes of a restaurant, bakery or hotel, any bread, biscuit, pretzels, crackers, buns, rolls, macaroni, cake, pies, or any food products of which flour or meal is a principal ingredient. Continental Baking Co. v. Campbell, 176 Okl. 218, 55 P.2d 114, 116.

BAKING POWDER. A mixture in dry form of certain alkali and acid substances, combined with a filler; when moistened and heated, as in baking dough, a chemical reaction occurs, liberating carbonic gas, which "raises" or leavens the bread. Royal Baking Powder Co. v. Emerson, C.C.A.Ark., 270 F. 429, 436.

BALIENA. A large fish, called by Blackstone a "whale." Of this the king had the head and the queen the tail as a perquisite whenever one was taken on the coast of England. 1 Bl.Comm. 222; Prynne, Ann.Reg. 127.

BALANCE. An equality between the sums total of the two sides of an account, or the excess on either side. Jones v. Marrs, 114 Tex. 62, 263 S.W. 570, 574.

The conclusion or result of the debit and credit sides of an account. It implies mutual dealings, and the existence of debt and credit, without which there could be no balance. Thillman v. Shadrick, 69 Md. 528, 16 Atl. 138. The amount remaining due from one person to another on a settlement of the accounts involving their mutual dealings; the difference between the two sides (debit and credit) of an account.

Often used in the sense of residue or remainder, and, in a general sense, may be defined as what remains or is left over. Commercial Discount Co. v. Holland, 107 Cal.App. 83, 289 P. 906, 908.

—Balance of convenience. A term descriptive of a rule for determining in a doubtful case what decree should be made; for example, whether an injunction should be granted. Cohen v. City of Houston, Tex.Civ.App., 176 S.W. 809, 814. It pertains to a test to determine what order will with the least inconvenience to either party assure the victorious one the fruits of his decree. Town of Williams v. Iowa Falls Electric Co., 185 Iowa, 493, 170 N.W. 815.

—Balance of power. In international law. A distribution and an opposition of forces, forming one system, so that no state shall be in a position, either alone or united with others, to impose its will on any other state or interfere with its independence. Ortolan.

—Balance sheet. A statement made by merchants and others to show the true state of a particular business.

When it is desired to ascertain the exact state of a merchant's business, or other commercial enterprise, at a given time, all the ledger accounts are closed up to date and balances struck; and these balances, when exhibited together on a single page, and so grouped and arranged as to close into each other and be summed up in one general result, constitute the "balance-sheet." Eyre v. Harmon, 92 Cal. 580, 28 P. 779.

—General balance. Sometimes used to signify the difference which is due to a party claiming a lien on goods in his hands for work or labor done, or money expended in relation to those and other goods of the debtor. 3 B. & P. 485; 3 Esp. 268; McWilliams v. Allan, 45 Mo. 573.

—Net balance. In commercial usage, the balance of the proceeds, as from a sale of stock, after deducting the expenses incident to the sale. Evans v. Waln, 71 Pa. 74.

BALCANIFER, or BALDAKINIFER. The standard-bearer of the Knights Templar.

BALCONIES. Small galleries of wood or stone on the outside of houses. In London, the erection of them is regulated by the building acts.

BALDIO. In Spanish law. Waste land; land that is neither arable nor pasture. White New Recop. b. 2, tit. 1, c. 6, § 4, and note. Unappropriated public domain, not set apart for the support of municipalities. Sheldon v. Milmo, 90 Tex. 1, 36 S.W. 415.

BALE. A pack or certain quantity of goods or merchandise, wrapped or packed up in cloth and corded round very tightly, marked and numbered with figures corresponding to those in the bills of lading for the purpose of identification. Wharton.

A bale of cotton is a certain quantity of that commodity compressed into a cubical form, so as to occupy less room than when in bags. 2 Car. & P. 525. Penrice v. Cocks, 2 Miss. 229.

A standard package of merchantable lint cotton, separated from the seed by the first process of a cotton gin, weighing approximately 500 pounds, and classifiable under one of the recognized market grades. Wichita Falls Compress Co. v. W. L. Moody & Co., Tex.Civ.App., 154 S.W. 1032, 1045.

BALISE. Fr. In French marine law. A buoy.

BALIUS. In the civil law. A teacher; one who has the care of youth; a tutor; a guardian. Du Cange; Spelman.

BALIVA. (Spelled also *Balliva;* equivalent to *Balivatus, Balivia).* L. Lat. In old English law. A bailiwick; the jurisdiction of a sheriff; the whole district within which the trust of the sheriff was to be executed. Cowell; 3 Bla.Com. 283.

BALIVO AMOVENDO. See Ballivo Amovendo.

BALL—HOOTING. In lumbering, a term designating a process of sliding log down a mountain side. Bradford v. English, 190 N.C. 742, 130 S.E. 705.

BALLAST. That which is used for trimming a ship to bring it down to a draft of water proper and safe for sailing. Great Western Ins. Co. v. Thwing, 13 Wall. 674, 20 L.Ed. 607.

There is considerable analogy between *ballast* and *dunnage.* Dunnage is placed under the cargo to keep it from being wetted by water getting into the hold, or between the different parcels to keep them from bruising and injuring each other. Great Western Ins. Co. v. Thwing, 13 Wall. 674, 20 L. Ed. 607.

BALLASTAGE. A toll paid for the privilege of taking up ballast from the bottom of a port or harbor. This arises from the property in the soil. 2 Chitty, Comm.Law 16.

BALLIUM. A fortress or bulwark; also bail. Cunningham.

BALLIVO AMOVENDO. An ancient writ to remove a bailiff from his office for want of sufficient land in the bailiwick. Reg.Orig. 78.

BALLOON. See Aeronaut; Aeronautics; Aircraft.

BALLOON MORTGAGE. A mortgage providing for specific payments at stated regular intervals, and final payment of more than twice any of the periodic payments. Bellman v. Yarmark Enterprises, Inc., Fla.App., 180 So.2d 663, 665.

BALLOT. Derived from ballotta, a round bullet, a voice or lot, means act of voting, usually in secret, by balls or by written or printed tickets or slips of paper; the system of voting by balls or tickets, or by any device for casting or recording votes, as by voting machine. Norris v. Mayor and City Council of Baltimore, 192 A. 531, 535, 172 Md. 667. Also piece of paper on which the voter gives expression to his choice. Sawyer Stores v. Mitchell, 103 Mont. 148, 62 P.2d 342, 348.

A slip of paper bearing the names of the offices to be filled at the particular election and the names of the candidates for whom the elector desires to vote, or containing a particular question of administration or public policy on which the voter is asked to express his views. It may be printed, or written, or partly printed and partly written, and is deposited by the voter in a "ballot box" which is in the custody of the officers holding the election. Denny v. Pratt, 104 Conn. 396, 133 A. 107, 108.

Used as a symbol of secrecy, while "viva voce" is used as a symbol of publicity. Day v. Walker, 124 Neb. 500, 247 N.W. 350, 351.

The whole amount of votes cast.

### Joint Ballot

In parliamentary practice, an election or vote by ballot participated in by the members of both houses of a legislative assembly sitting together as one body, the result being determined by a majority of the votes cast by the joint assembly thus constituted, instead of by concurrent majorities of the two houses. See State v. Shaw, 9 S.C. 144.

### Official Ballot

Depending on its use in local statutes, this term has a varied meaning. It may refer to a ballot which has been furnished by the clerk; Cain v. Garvey, Tex.Civ.App., 187 S.W. 1111, 1116; or it may contemplate that a ballot must have been printed under the supervision of a designated member of the electoral board, sealed by the board, and by resolution declared to be one of the official ballots for the election to be held; Xippas v. Commonwealth, 141 Va. 497, 126 S.E. 207, 209.

### Mutilated Ballot

One from which the name of the candidate is cut out. Murray v. Waite, 113 Me. 485, 94 A. 943, 945, Ann.Cas.1918A, 1128. One which is destitute or deprived of some essential or valuable part; greatly shortened. Stubbs v. Moursund, Tex.Civ. App., 222 S.W. 632, 634.

BALLOT-BOX. A case usually made of wood for receiving ballots.

BALLOTTEMENT. Fr. In medical jurisprudence. A test for pregnancy by palpation with the finger inserted in the vagina to the mouth of the uterus. The tip of the finger being quickly jerked upward, the foetus, if one be present, can be felt rising upward and then settling back against the finger.

BALNEARIL In the Roman law. Those who stole the clothes of bathers in the public baths. 4 Bl.Comm. 239.

BAN.

### In Old English and Civil Law

A proclamation; a public notice; the announcement of an intended marriage. Cowell. An excommunication; a curse, publicly pronounced. A proclamation of silence made by a crier in court before the meeting of champions in combat. Cowell. A statute, edict, or command; a fine, or penalty. An expanse; an extent of space or territory; a space inclosed within certain limits; the limits or bounds themselves. Spelman. An open field; the outskirts of a village. A privileged space or territory around a town, monastery, or other place.

### French Law

The right of announcing the time of mowing, reaping, and gathering the vintage, exercised by certain seignorial lords. Guyot, Repert. Univ.

### Old European Law

A military standard; a thing unfurled, a banner. Spelman. A summoning to a standard; a calling out of a military force; the force itself so summoned; a national army levied by proclamation.

BANAL. In Canadian and old French law. Pertaining to a ban or privileged place; having qualities or privileges derived from a *ban.* Thus, a banal mill is one to which the lord may require his tenant to carry his grain to be ground.

BANALITY. In Canadian law. The right by virtue of which a lord subjects his vassals to grind at his mill, bake at his oven, etc. Used also of the region within which this right applied. Guyot, Repert. Univ.; 1 Low.C. 31; 3 Low.C. 1.

BANC. Bench; the place where a court permanently or regularly sits; the seat of judgment; as, *banc le roy,* the king's bench; *banc le common pleas,* the bench of common_pleas.

The full bench, full court. A "sitting 'in *bane"* is a meeting of all the judges of a court, usually for the purpose of hearing arguments on demurrers, points reserved, motions for new trial, etc., as distinguished from the sitting of a single judge at the assises or at *nisi Arius* and from trials at bar. Cowell.

BANCI NARRATORES. In old English law. Advocates; countors; serjeants. Applied to advocates in the common pleas courts. 1 Bl.Comm. 24; Cowell.

BANCO. Ital. A seat or bench of justice; also, in commerce, a word of Italian origin signifying a bank. Also a small tract of land on opposite side of river from country to which it belongs, and so existing by virtue of an avulsive change in the river. San Lorenzo Title & Improvement Co. v. City Mortgage Co., Tex.Civ.App., 48 S.W.2d 310, 314. See, also, Banc.

BANCUS. L. Lat. In old English law and practice. A bench or seat in the king's hall or palace. Fleta, lib. 2, c. 16, §

A high seat, or seat of distinction; a seat of judgInent, or tribunal for the administration of justice.

Often used for the court itself ; thus, the English court of common pleas was formerly called *Bancus.* Viner, Abr. *Courts (M).*

A sitting *in banc;* the sittings of a court with its full judicial authority, or in full form, as distinguished from sittings at *nisi prius.* Cowell; Spelman.

A stall, bench, table, or counter, on which goods were exposed for sale. Cowell.

BANCUS REGIME, The queen's bench. See Queen's Bench.

BANCUS REGIS. The king's bench; the supreme tribunal of the king after parliament. 3 Bl.Comm. 41.

In Banco Regis. In or before the court of king's bench.

BANCUS SUPERIOR. The upper bench. The king's bench was so called during the Protectorate.

BAND. In old Scotch law. A proclamation calling out a military force.

BANDIT. An outlaw; a man *banned,* or put under a ban; a brigand or robber. *Banditti,* a band of robbers.

BANE. A malefactor. Bract. 1. 1, t. c. 1.

Also a public denunciation of a malefactor; the same with what was called *"hutesium,"* hue and cry. Spelman.

BANERET, or BANNERET. In English law. A knight made in the field, by the ceremony of cutting off the point of his standard, and making it, as it were, a banner. Knights so made are accounted so honorable that they are allowed to display their arms in the royal army, as barons do, and may bear arms with supporters. They were sometimes called *"vexillarii."* Wharton.

A degree of honor next after a baron's, when conferred by the king; otherwise, it ranks after a baronet. 1 Bla.Comm. 403.

BANI. Deodands (q. v.).

BANISHMENT. In criminal law. A punishment inflicted upon criminals, by compelling them to quit a city, place, or country for a specified period of time, or for life. Cooper v. Telfair, 4 Dall. 14, 1 L.Ed. 721; People v. Potter, 1 Park.Cr.R. (N.Y.) 54. Synonymous with exilement and imports a compulsory loss of one's country. 3 P. Wms. 38.

It is inflicted principally upon political offenders, "transportation" being the word used to express a similar punishment of ordinary criminals. Banishment, however, merely forbids the return of the person banis'ed before the expiration of the sentence, while transportation involves the idea of deprivation of liberty after the convict arrives at the place to which he has been carried. Rap. & L.

BANISTER AND RAILING. These words, in the New York Tenement House Law, § 35, mean a balustrade, consisting of balusters or supports, upon which is placed a railing commonly placed on the outer or open edge of a stairway. Cahill v. Kleinberg, 233 N.Y. 255, 135 N.E. 323.

BANK. A bench or seat; the bench of justice; the bench or tribunal occupied by the judges; the seat of judgment; a court. The full bench, or full court; the assembly of all the judges of a court.

A "sitting *in bank"* is a meeting of all the judges of a court, usually for the purpose of hearing arguments on demurrers, points reserved, motions for new trial, and other law points, as distinguished from the sitting of a single judge at the assises or at *nisi prius* and from trials at bar to determine facts. 3 Bla.Comm. 28, n. But in this sense, *banc* is perhaps the more usual form of the word. "Sitting in bank" is also described as an official meeting of four of the judges of a common-law court. Wharton, Lex.

*Bank le Roy.* The king's bench. Finch, 198.

An acclivity; an elevation or mound of earth, especially that which borders the sides of a water course.

The land adjacent to a river. Graham v. Knight, Tex. Civ.App., 240 S. W. 981, 983.

That part of a stream which retains the water. Dawson County v. Phelps County, 94 Neb. 112, 142 N.W. 697, 699.

The elevation of land which confines the waters of a stream in their natural channel when they rise the highest and do not overflow the banks. Department of Health of New Jersey v. Chemical Co. of America, 90 N.J.Eq. 425, 107 A. 164, 166. A water-washed and relatively permanent elevation or acclivity at the outer line of a river bed which separates the bed from the adjacent upland, and serves to confine the waters within the bed and to preserve the course of the river. State of Oklahoma v. State of Texas, 43 S.Ct. 221, 260 U.S. 606, 67 L.Ed. 428; Horton v. Niagara, Lockport & Ontario Power Co., 247 N.Y.S. 741, 745, 231 App.Div. 386. The land lying between the edge of the water of a stream at its ordinary low stage and the line which the edge of the water reaches in its ordinary high stage. Wemple v. Eastham, 150 La. 247, 90 So. 637, 638. An elevation of land which confines the waters of a stream when they rise out of the bed. Neither the line of ordinary high-water mark, nor of ordinary low-water mark, nor of a middle stage of water can be assumed as the line dividing the bed from the banks. Banks are fast land, on which vegetation appropriate to such land in the particular locality grows wherever the bank is not too steep to permit such growth, and bed is soil of a different character, and having no vegetation, or only such as exists, when commonly submerged in water. State v. Nolegs, 139 P. 943, 946, 40 Okl. 479. On the borders of navigable streams, where there are levees established according to law, the levees form the "banks of the river." Ward v. Board of Levee Com'rs of Orleans Levee Dist., 152 La. 158, 92 So. 769, 772.

An institution, of great value in the commercial world, empowered to receive deposits of money,

to make loans, and to issue its promissory notes, (designed to circulate as money, and commonly called "bank-notes" or "bank-bills,") or to perform any one or more of these functions. State v. Wagner, 202 Iowa, 739, 210 N.W. 901, 902; People v. Bartow, 6 Cow.N.Y. 290; Dearborn v. Northwestern Savings Bank, 42 Ohio St. 617; In re Prudence Co., D.C.N.Y., 10 F.Supp. 33, 36.

An institution, usually incorporated with power to issue its promissory notes intended to circulate as money (known as bank notes) ; or to receive the money of others on general deposit, to form a joint fund that shall be used by the institution, for its own benefit, for one or more of the purposes of making temporary loans and discounts ; of dealing in notes, foreign and domestic bills of exchange, coin, bullion, credits, and the remission of money; or with both these powers, and with the privileges, in addition to these basic powers, of receiving special deposits and making collections for the holders of negotiable paper, if the institution sees fit to engage in such business. State of Kansas ex rel. Boynton v. Hayes, C.C.A.Kan., 62 F.2d 597, 600. The term "bank" is usually restricted in its application to an incorporated body; while a private individual making it his business to conduct banking operations is generally denominated a "banker." Hobbs v. Bank, C.C.A. N.Y., 101 F. 75, 41 C.C.A. 205; Wells, Fargo & Co. v. Northern Pac. R. Co., C.C.Or., 23 F. 469.

The house or place where the business of banking is carried on.

Banks in the commercial sense are of three kinds, viz. : (1) of deposit; (2) of discount; (3) of circulation. Strictly speaking, the term "bank" implies a place for the deposit of money, as that is the most obvious purpose of such an institution. Originally the business of banking consisted only in receiving deposits, such as bullion, plate, and the like, for safe-keeping until the depositor should see fit to draw it out for use, but the business, in the progress of events, was extended, and bankers assumed to discount bills and notes, and to loan money upon mortgage, pawn, or other security, and, at a still later period, to issue notes of their own, intended as a circulating currency and a medium of exchange, instead of gold and silver. Modern bankers frequently exercise any two or even all three of those functions, but it is still true that an institution prohibited from exercising any more than one of those functions is a bank, in the strictest commercial sense. Oulton v. German Sav. & L. Soc., 17 Wall. 118, 21 L.Ed. 618; Millikan v. Security Trust Co., 118 N.E. 568, 569, 187 Ind. 307; Rev.St.U.S. § 3407 (12 USCA § 561).

—Bank-account. A sum of money placed with a bank or banker, on deposit, by a customer, and subject to be drawn out on the latter's check. The statement or computation of the several sums deposited and those drawn out by the customer on checks, entered on the books of the bank and the depositor's passbook. Gale v. Drake, 51 N.H. 84.

—Bank bill. Same as bank note. Eastman v. Corn., 4 Gray (Mass.) 416. See Bank note, *infra.*

—Bank book. A book kept by a customer of a bank, showing the state of his account with it. See Pass-book.

—Bank cashier. A chief executive officer and general agent through whom financial operations of bank are conducted. Hamilton Nat. Bank of Chattanooga, Tenn., v. Lerman, 229 Ala. 363, 157 So. 75.

—Bank charges. This term in an action on a bill of exchange is equivalent to expenses of noting and may be especially endorsed as a liquidated demand; [1893] 1 Q.B. 318.

—Bank check. See Check.

—Bank credit. A credit with a bank by which, on proper security given to the bank, a person receives liberty to draw to a certain extent agreed upon. In Scotland also called a cash account. Cent. Dict.

—Bank depositor. One who delivers to or leaves with a bank a sum of money subject to his order. Wharton v. Poughkeepsie Sav. Bank, 31 N.Y.S.2d 311, 313, 262 App.Div. 598.

—Bank draft. A check, draft, or other order for payment of money, drawn by an authorized officer of a bank upon either his own bank or some other bank in which funds of his bank are deposited. Polotsky v. Artisans Sav. Bank, Del., 180 A. 791, 792, 7 W.W.Harr. 142.

—Bank note. A promissory note issued by a bank or banker authorized to do so, payable to bearer on demand, and intended to circulate as money. Townsend v. People, 4 Ill. 328; Low v. People, 2 Park.Cr.R. (N.Y.) 37. See, also, Banker's note.

In the early history of banks, their notes were generally denominated bills of credit. Briscoe v. Bank of the Commonwealth of Kentucky, 11 Pet. 257, 9 L.Ed. 709.

—Bank stock. Shares in the capital of a bank; shares in the property of a bank. In England the term is applied chiefly to the stock of the Bank of England.

—Bank teller. See Teller.

—Bank in failing condition. Under sdme statutes, an insolvent bank. Hanson v. State, 160 Ark. 329, 254 S.W. 691, 694.

—Bank of circulation. One which issues bank notes payable to bearer. Dunn v. State, 13 Ga. App. 314, 79 S.E. 170, 171. See Bank of issue, *infra.*

—Bank of deposit. A savings bank or any other bank which receives money on deposit. Dunn v. State, 13 Ga.App. 314, 79 S.E. 170, 171.

—Bank of discount. One which lends money on collateral or by means of discounts of commercial paper. Dunn v. State, 13 Ga.App. 314, 79 S.E. 170, 171.

—Bank of issue. One which, pursuant to authority conferred by its charter, issues its own notes intended to circulate as money. Millikan v. Security Trust Co., 187 Ind. 307, 118 N.E. 568, 569.

—Joint-stock banks. In English law. Joint-stock companies for the purpose of banking. They are regulated, according to the date of their incorporation, by charter, or by 7 Geo. IV, c. 46; 7 & 8 Vict. cc. 32, 113; 9 & 10 Vict. c. 45, (in Scotland and Ireland; ) 20 & 21 Vict. c. 49; and 27 & 28 Vict. c. 32; or by the "Joint-Stock Companies Act, 1862," (25 & 26 Vict. c. 89.) Wharton.

—Savings bank. An institution in the nature of a bank, formed or established for the purpose of receiving deposits of money, for the benefit of the

persons depositing, to accumulate the produce of so much thereof as shall not be required by the depositors, their executors or administrators, at compound interest, and to return the whole or any part of such deposit, and the produce thereof, to the depositors, their executors or administrators, deducting out of such produce so much as shall be required for the necessary expenses attending the management of such institution, but deriving no benefit whatever from any such deposit or the produce thereof. Grant, Banks, 546; Bulakowski v. Philadelphia Say. Fund Soc., 270 Pa. 538, 113 A. 553, 554. They differ from the ordinary banks of discount and deposit in not being engaged in business for profit. Commercial Trust Co. of New Jersey v. Hudson County Board of Taxation, 86 N.J.Law, 424, 92 A. 263, 265.

BANK HOLIDAY OF 1933. Presidential Proclamations No. 2039, issued March 6, 1933, and No. 2040, issued March 9, 1933, temporarily suspended banking transactions by member banks of the Federal Reserve System. Normal banking functions were resumed on March 13, subject to certain restrictions. The first proclamation, it was held, had no authority in law until the passage on March 9, 1933, of a ratifying act (12 U.S.C.A. § 95b). Anthony v. Bank of Wiggins, 183 Miss. 885, 184 So. 626. The present law forbids member banks of the Federal Reserve System to transact banking business, except under regulations of the Secretary of the Treasury, during an emergency proclaimed by the President. 12 U.S.C.A. § 95.

BANK NIGHT. A device by which a theater provides a registration book which any person over eighteen years of age, whether a patron of the theater or not, may sign. The book is placed in the lobby or outside the doors of the theater and no charge is made for registration nor need one who does so buy a ticket to the theater. A number is given to each name. On stated occasions, the numbers representing all the names registered are placed in a container on the stage of the theater and one number is drawn. The name of the person having that registration number is announced both inside and outside the theater and on coming forward within a certain time, he receives a sum of money which the theater provides from its own funds. If the person whose number is drawn is outside the theater, he is permitted to enter and claim the award without paying the admission. If he does not come forward within the time set, the money is added to the sum to be awarded on the next bank night. Under the plan, various safeguards are thrown about the operation to insure fairness in the allotment of the money. State v. Dorau, 124 Conn. 160, 198 A. 573, 574. If not a *lottery,* a bank night is at least a *gift enterprise.* Barker v. State, 56 Ga. App. 705, 193 S.E. 605, 609. But it is generally considered to be a *lottery.* State ex rel. Hunter v. Fox Beatrice Theatre Corporation, 133 Neb. 392, 275 N.W. 605, 606; Furst v. A. & G. Amusement Co., 128 N.J.L. 311, 25 A.2d 892, 893; Commonwealth v. Lund, 142 Pa.Super. 208, 15 A.2d 839, 846.

BANKABLE PAPER. In mercantile law. Notes, checks, bank bills, drafts, and other securities for money, received as cash by the banks. The term does not necessarily mean discountable paper, but paper of such high credit that, if the time of payment was reasonable and the banks had loanable funds, they would ordinarily discount it. Edward P. Allis Co. v. Madison Electric Light, Heat & Power Co., 9 S.D. 459, 70 N.W. 650, 652.

National bank notes are received as bankable money without regard to the locality of the bank issuing them. U.S.Rev.Stat. § 5133 (12 USCA § 21); Veazie Bank v. Fenno, 8 Wall. 533, 19 L.Ed. 482.

BANKER. A private person who keeps a bank; one who is engaged in the business of banking. People v. Doty, 80 N.Y. 228; Auten v. Bank, 19 S.Ct. 628, 174 U.S. 125, 43 L.Ed 920.

Individual Banker

Under some statutes, an individual banker, as distinguished from a "private banker" *(q. v.),* is a person who, having complied with the statutory requirements, has received authority from the state to engage in the business of banking, while a private banker is a person engaged in banking without having any special privileges or authority from the state. Perkins v. Smith, 116 N.Y. 441, 23 N.E. 21.

Private Banker

One who carries on the business of banking without being incorporated. State of Missouri v. Angle, C.C.A.Mo., 236 F. 644, 650; Herzog v. Transatlantic Trust Co., Sup., 172 N.Y.S. 394, 395. One who carries on the business of banking by receiving money on deposit with or without interest, by buying and selling bills of exchange, promissory notes, gold or silver coin, bullion, uncurrent money, bonds or stock, or other securities, and by loaning money without being incorporated. State ex rel. Barker v. Sage, 267 Mo. 493, 184 S.W. 984, 988. See Individual banker, *supra.*

BANKER'S ACCEPTANCE. A draft or bill of exchange of which the acceptor is a bank or banker engaged generally in the business of granting bankers' acceptance credits. Atterbury v. Bank of Washington Heights of City of New York, 241 N.Y. 231, 149 N.E. 841, 843.

BANKER'S LIEN. A lien which a banker has by virtue of which he can appropriate any money or property in his possession belonging to a customer to the extinguishment of any matured debt of such customer to the bank, provided such property or money has not been charged, with the knowledge of the bank, with the subservience of a special burden or purpose, or does not constitute a trust fund of which the banker has notice. American Surety Co. of New York v. Bank of Italy, 63 Cal.App. 149, 218 P. 466, 468.

BANKER'S NOTE. A commercial instrument resembling a bank note in every particular except that it is given by a private banker or unincorporated banking institution. 6 Mod. 29; 3 Chit. Comm.Law 590.

BANKEROUT. 0. Eng. Bankrupt; insolvent; indebted beyond the means of payment.

BANKING. The business of receiving money on deposit, loaning money, discounting notes, issuing notes for circulation, collecting money on notes deposited, negotiating bills, etc. Bank v. Turner, 154 Ind. 456, 57 N.E. 110.

The business of banking, as defined by law and custom, consists in the issue of notes payable on demand intended to circulate as money when the banks are banks of issue; In receiving deposits payable on demand ; in discounting commercial paper ; making loans of money on collateral security; buying and selling bills of exchange; negotiating loans, and dealing in negotiable securities issued by the government, state and national, and municipal and other corporations. Mercantile Bank v. New York, 121 U.S. 138, 156, 7 S.Ct. 826, 30 L.Ed. 895 ; In re Prudence Co., D. C.N.Y., 10 F.Supp. 33, 36.

Having a place of business where deposits are received and paid out on checks and where money is loaned on security is the substance of the "business of banking." Marvin v. Kentucky Title Trust Co., 218 Ky. 135, 291. S.W. 17, 18, 50 A.L.R. 1337; State of Kansas ex rel. Boynton v. Hayes, C.C.A.Kan., 62 F.2d 597, 600.

BANKING A DEAL. Means making to one who wishes to consummate a deal a loan of money on collateral for a consideration which may consist of interest, a fee, or a part of the securities or property involved in the deal. Cray, McFawn & Co. v. Hegarty, Conroy & Co., D.C.N.Y., 27 F.Supp. 93, 99.

BANKING GAME. Gambling game at which money is bet or hazarded. State v. Singley, 195 La. 519, 197 So. 218, 219.

BANKING HOURS. A term which, in addition to the regular hours, includes time to allow presentment, after closing, to the bank returning a check, if such presentment is necessary in fact. Columbia-Knickerbocker Trust Co. v. Miller, 156 App. Div. 810, 142 N.Y.S. 440, 445.

BANKRUPT. Originally and strictly, a trader who secretes himself or does certain other acts tending to defraud his creditors. 2 Bl.Comm. 471; Shor v. McGregor, C.C.A.Tex., 108 F.2d 421, 423. In a looser sense, an insolvent person; a broken-up or ruined trader. Everett v. Stone, 3 Story, 453, Fed.Cas.No.4,577.

In the English law there were two characteristics which distinguished bankrupts from insolvents : the former must have been a *trader* and the object of the proceedings *against,* not by, him. As used in American law, the distinction between a bankrupt and an insolvent is not generally regarded. Sturges v. Crowninshield, 4 Wheat. 122, 4 L.Ed. 529; 2 Kent, 390; McCormick v. Pickering, 4 N.Y. 283. On the continent of Europe, however, the distinction still exists. Holtz.Enc. *voc. sig.* Bankerott.

A person who has committed an act of bankruptcy; one who has done some act or suffered some act to be done in consequence of which, under the laws of his country, he is liable to be proceeded against by his creditors for the seizure and distribution among them of his entire property. Ashby v. Steere, 2 Woodb. & M. 347, 2 Fed. Cas. 15; In re Scott, 21 Fed.Cas. 803; U. S. v. Pusey, 27 Fed.Cas. 632. For "Examination of bankrupt", see Examination.

The term includes one against whom involuntary petition has been filed. United States v. Agresti, C.C.A.N.Y., 130 F.2d 152, 153, 154.

A person who, by the formal decree of a court, has been declared subject to be proceeded against under the bankruptcy laws, or entitled, on his voluntary application, to take the benefit of such laws. See Bankruptcy Act July 1, 1898, c. 541, § 1, 30 Stat. 544 (11 USCA § 1).

BANKRUPT LAW. A law for benefit and relief of creditors and their debtors in cases in which the latter are unable or unwilling to pay their debts. Campbell v. Alleghany Corporation, C.C. A.Md., 75 F.2d 947, 951.

A bankrupt law is distinguished from the ordinary law between debtor and creditor, as involving these three general principles : (1) A summary and immediate seizure of all the debtor's property; (2) a distribution of it among the creditors in general, instead of merely applying a portion of it to the payment of the individual complainant; and (3) the discharge of the debtor from future liability for the debts then existing.

The leading distinction between a bankrupt law and an insolvent law, in the proper technical sense, consists in the character of the persons upon whom it is designed to operate,—the former contemplating as its objects bankrupts only, that is, traders of a certain description; the latter; insolvents in general, or persons unable to pay their debts. This has led to a marked separation between the two systems, in principle and in practice, which in England has always been carefully maintained, although in the United States it has of late been disregarded. A bankrupt law, moreover, in its proper sense, is a remedy intended primarily for the benefit of creditors; it is set In motion at their instance, and operates upon the debtor against his will, *(in invitum,)* although in its result it effectually discharges him from his debts. An insolvent law, on the other hand, is chiefly intended for the benefit of the debtor, and' is set in motion at his instance, though possibly less effective as a discharge in its final result. Sturges v. Crowninshield, 4 Wheat. 194, 4 L.Ed. 529; Vanuxen v. Hazlehursts, 4 N.J.Law, 192, 7 Am.Dec. 582; Adams v. Storey, 1 Paine, 79, 1 Fed.Cas. 142; Kunzler v. Kohaus, 5 Hill (N.Y.) 317.

The only substantial difference between a strictly bankrupt law and an insolvent law lies in the circumstance that the former affords relief upon the application of the creditor, and the latter upon the application of the debtor. Martin v. Berry, 37 Cal. 222.

BANKRUPTCY. The state or condition of one who is a bankrupt; amenability to the bankrupt laws; the condition of one who has committed an act of bankruptcy, and is liable to be proceeded against by his creditors therefor, or of one whose circumstances are such that he is entitled, on his voluntary application, to take the benefit of the bankrupt laws.

The term is used in a looser sense as synonymous with "insolvency,"—inability to pay one's debts; the stopping and breaking up of business because the trader is broken down, insolvent, ruined. Phipps v. Harding, C.C.A.Wis., 70 Fed. 468, 17 C.C.A. 203, 30 L.R.A. 513.

It constitutes a branch of equity jurisprudence. In re Flour Mills of America, D.C.Mo., 27 F.Supp. 559, 560. Its purpose is to secure finally to creditors distribution of value of at least part of debtor's assets and to bankrupt discharge from his debts, to end that creditors may be paid as much as may be and that bankrupt may have new start in life. In re Jones, D.C.Mo., 10 F.Supp. 165, 167.

Insolvency means a simple inability to pay as debts should become payable, whereby the debtor's business would be broken up; bankruptcy means the particular legal *status,* to be ascertained and declared by a judicial decree. In re Black, 2 Ben. 196, Fed.Cas.No.1,457.

The proceedings taken under the bankrupt law, against a person (or firm or company) to have

him adjudged a bankrupt, and to have his estate administered for the benefit of the creditors, and divided among them. That branch of jurisprudence, or system of law and practice, which is concerned with the definition and ascertainment of acts of bankruptcy and the administration of bankrupts' estates for the benefit of their creditors and the absolution and restitution of bankrupts.

Act of Bankruptcy. See Act.

Adjudication of Bankruptcy

The judgment or decree of a court having jurisdiction, that a person against whom a petition in bankruptcy has been filed, or who has filed his voluntary petition, be ordered and adjudged to be a bankrupt.

Bankruptcy Courts. Courts for the administration of the bankrupt laws.

Bankruptcy Proceedings

This term includes all proceedings in a federal court having jurisdiction in bankruptcy, founded on a petition in bankruptcy and either directly or collaterally involved in the adjudication and discharge of the bankrupt and the collection and administration of his estate. Kidder v. Horrobin, 72 N.Y. 167. See, also, Proceedings in bankruptcy. Steps in administration of estate in bar kruptcy court within summary jurisdiction of bankruptcy court. (Bankr.Act, § 24a, b, 11 U.S.C.A. § 47(a) (b). Childs v. Ultramares Corporation, C.C.A. N.Y., 40 F.2d 474, 477.

Controversies Arising in Bankruptcy Proceedings. See Proceedings in bankruptcy.

Extension. See Extension.

Involuntary Bankruptcy. See Voluntary bankruptcy, *infra.*

Voluntary Bankruptcy

Bankruptcy (in the sense of proceedings taken under the bankruptcy law) is either voluntary or involuntary; the former where the proceeding is initiated by the debtor's own petition to be adjudged a bankrupt and have the benefit of the law. In re Murray, D.C.Iowa, 96 F. 600; Metsker v. Bonebrake, 2 Sup.Ct. 351, 108 U.S. 66, 27 L.Ed. 654, the latter where he is forced into bankruptcy on the petition of a sufficient number of his creditors.

See Bankrupt; Bankrupt Law.

Bankruptcy Rule

Allows claim only for amount of debt, less value of security. In re Baker, 333 Pa. 273, 3 A.2d 785, 786.

BANLEUCA. (Same as the French *banlieue).* An old law term, signifying a space or tract of country around a city, town, or monastery, distinguished and protected by peculiar privileges. Spelman.

BANLIEU, or BANLIEUE. In French and Canadian law. The same as *banleuca (q. v.).*

BANNER. A small flag bearing a device or symbol and intended to be carried or waved. L.R. 2 P.C. 387. The term includes a canvas, parti-colored or bearing party words and stretched across a street. 4 O'M. & H. 179.

BANNERET, See Baneret.

BANNI, or BANNITUS. In old law, one under a ban, *(q. v.;)* an outlaw or banished man. Britt. cc. 12, 13; Calvin.

BANNI NUPTIARUM. L. Lat. In old English law. The bans of matrimony.

BANNIMUS. Lat. We ban or expel. The form of expulsion of a member from the University of Oxford, by affixing the sentence in some public places, as a promulgation of it. Cowell.

BANNIRE AD PLACITA, AD MOLENDINUM. To summon tenants to serve at the lord's courts, to bring corn to be ground at his mill.

BANNITIO. Banishment; expulsion by a ban or public proclamation. Adams Gloss.

BANNITUS. See Banni.

BANNS OF MATRIMONY. Public notice or proclamation of a matrimonial contract, and the intended celebration of the marriage of the parties in pursuance of such contract. Cowell; 1 Bla. Comm. 439; Pothier, *Du Man age* p. 2, c. 2.

Such announcement is required by the English law to be made in a church or chapel, during service, on three consecutive Sundays before the marriage is celebrated. The object is to afford an opportunity for any person to interpose an objection if he knows of any impediment or other just cause why the marriage should not take place. The publication of the banns may be dispensed with by procuring a special license to marry.

]ANNUM. A ban (q. v.).

BANNUS. In old English law. A proclamation. *Bannus regis;* the king's proclamation, made by the voice of a herald, forbidding all present at the trial by combat to interfere either by motion or word, whatever they might see or hear. Bract. fol. 142.

BANQUE. Fr. A bench; the table or counter of a trader, merchant, or banker. *Banque route;* a broken bench or counter; bankrupt.

BANS OF MATRIMONY. See Banns of Matrimony.

BANYAN. In East Indian law. A Hindoo merchant or shop-keeper. The word is used in Bengal to denote the native who manages the money concerns of a European, and sometimes serves him as an interpreter.

BAR. A partition or railing running across a court-room, intended to separate the general public from the space occupied by the judges, counsel, jury, and others concerned in the trial of a cause. In the English courts it is the parti-

tion behind which all outer-barristers and every member of the public must stand. Solicitors, being officers of the court, are admitted within it; as are also queen's counsel, barristers with patents of precedence, and serjeants, in virtue of their ranks. Parties who appear in person also are placed within the bar on the floor of the court.

A particular part of the court-room; for example, the place where prisoners stand at their trial, hence the expression "prisoner at the bar."

The court, in its strictest sense, sitting in full term. The presence, actual or constructive, of the court. Thus, a trial *at bar* is one had before the full court, distinguished from a trial had before a single judge at *nisi prius*. So the "case at bar" is the case now before the court and under its consideration; the case being tried or argued.

In another sense, the whole body of attorneys and counsellors, or the members of the legal profession, collectively, who are figuratively called the "bar," from the place which they usually occupy in court. They are thus distinguished from the "bench," which term denotes the whole body of judges.

In the practice of legislative bodies, the outer boundary of the house; therefore, all persons, not being members, who wish to address the house, or are summoned to it, appear *at the bar* for that purpose.

In the law of contracts, an impediment, obstacle, or preventive barrier. -

Thus, relationship within the prohibited degrees is a bar to marriage. In this sense also we speak of the "bar of the statute of limitations."

That which defeats, annuls, cuts off, or puts an end to.

Thus, a provision "in bar of dower" is one which has the effect of defeating or cutting off the dower-rights which the wife would otherwise become entitled to in the particular land.

In pleading, a special plea, constituting a sufficient answer to an action at law; so called because it *barred, i. e.,* prevented, the plaintiff from further prosecuting it with effect, and, if established by proof, defeated and destroyed the action altogether. Now called a special "plea in bar." It may be further described as a plea or peremptory exception of a defendant to destroy the plaintiff's action. City of San Antonio v. Johnson, Tex.Civ.App., 186 S.W. 866. See Plea in bar.

A barrier or counter over which liquors and food are passed to customers, hence the portion of the room behind the counter where the liquors for sale are kept. Hinton v. State, 137 Tex.Cr.R. 352, 129 S.W.2d 670, 673.

BAR ASSOCIATION. An association of members of the bar. Such associations have been organized in most states. The first was in Mississippi in 1825, but it is not known to have had a continued existence. An association of Grafton and Coos counties in New Hampshire had an existence before 1800, and probably a more or less continuous life since then, having finally merged into a state association. Similar associations exist in many of the counties in various states.

—Bar integration. See Integrated Bar,

BAR FEE, In English law. A fee taken by the sheriff, time out of mind, for every prisoner who is acquitted. Bac.Abr. "Extortion." Abolished by St. 14 Geo. III. c. 26; 55 Geo. III. c. 50; 8 & 9 Vict. c. 114.

BAR ROOM. A place where intoxicating liquors are sold to be drunk on the same premises. City of Spokane v. Baughman, 103 P. 14, 17, 54 Wash. 315.

A room containing a bar or counter at which liquors are sold, or a room with a bar where liquors and refreshments are served. Mustard v. Elwood, C.C.A.Alaska, 223 F. 225, 226.

The words "bar" and "bar room" have a more restrictive meaning than "saloon," and mean a place from which intoxicating liquors are to be sold. Greil Bros. Co. v. Mabson, 179 Ala. 444, 60 So. 876, 877, 43 L.R.A.,N.S., 664.

BAR SINISTER. A term popularly though erroneously used for *baton,* a mark of illegitimacy. Webster.

BARAGARIA. Span. A concubine, whom a man keeps alone in his house, unconnected with any other woman. Las Partidas, pt. 4, tit. 14.

BARAT. See Berat,

BARATRIAM COMMITTIT QUI PROPTER PECUNIAM JUSTITIAM BARACTAT. He is guilty of barratry who for money sells justice. Bell. (This maxim, however, is one pertaining more to the meaning of "barratry" as used in Scotch law than to its common-law meaning. See Barratry.)

BARBANUS. In old Lombardic law. An uncle, *(patruus.)*

BARBAROUS. As used in a divorce statute, it implies a merciless and savage disposition, taking pleasure in suffering, without pity, and with an evil and malicious will. Hansell v. Hansell, 15 Pa.Co.Ct.R., 514, 515.

BARBER. One who makes a business of shaving and trimming beards and cutting and dressing hair. Dellacorte v. Gentile, 98 N.J.Eq. 194, 129 A. 739, 740.

The term has been held to include a woman, who, being employed in a beauty parlor serving women customers exclusively, cut a woman's hair in the style of bobbed hair. State v. Leftwich, 142 Wash. 329, 253 P. 448, 449, 59 A.L.R. 539. But it has also been thought that the proprietor of a "hairdressing and beauty parlor," the important features of whose business included cutting hair, massaging, clipping hair with barber clippers, singeing the hair, giving tonics, shampooing, and manicuring, but not shaving the face, was not a "barber" within a statute subjecting barbers to examination and regulation. Keith v. State Barber Board, 112 Kan. 834, 212 P. 871, 872, 31 A.L.R. 432.

In England in former times, barbers also practiced surgery and dentistry, but by 32 Hen. VIII, c. 42, barbers, although they were thereby incorporated with the surgeons of London, were not to practice surgery, except the drawing of teeth.

BARBICANAGE. In old European law. Money paid to support a barbican or watchtower.

BARBITTS. L. Fr. (Modern Fr. *brebis.)* Sheep.

BARE. Naked; without a covering; unaccompanied.

BARE OR MERE LICENSEE. One whose presence on premises is merely tolerated; while a "licensee" or "invitee" is one who is on the premises by invitation, express or implied. Chicago, R. I. & P. Ry. Co. v. McCleary, 175 Okl. 347, 53 P.2d 555, 557.

BARE PATENT LICENSE. A grant of authority to make, use or vend patented product throughout the United States or in a given part thereof, with no right of exclusion. 35 U.S.C.A. § 47. Innis, Speiden & Co. v. Food Machinery Corporation, D. C.Del., 2 F.R.D. 261, 263.

BARE TRUSTEE. One whose trust is to convey, and the time has arrived for a conveyance by him; or a trustee to whose office no duties were originally attached, or who, although such duties were originally attached to his office, would, on the requisition of his *cestuis que trust,* be compellable in equity to convey the estate to them or by their direction. Christie v. Ovington, 1 Ch.Div. 279, 281.

BAREBONES PARLIAMENT. A parliament summoned by Cromwell in 1653.

BARET. L. Fr. A wrangling suit. Britt. c. 92; Co.Litt. 368b.

BARGAIN. A mutual undertaking, contract, or agreement.

A contract or agreement between two parties, the one to sell goods or lands, and the other to buy them. Bank v. Archer, 16 Miss. 192.

As a verb, to sell for cash, or on terms, rather than to trade or exchange. In re Wellings' Estate, 197 Cal. 189, 240 P. 21, 24.

"If the word 'agreement' imports a mutual act of two parties, surely the word 'bargain' is not less significative of the consent of two. In a popular sense, the former word is frequently used as declaring the engagement of one only. A man may agree to pay money or to perform some other act, and the word is then used synonymously. with 'promise' or 'engage.' But the word 'bargain' is seldom used, unless to express a mutual contract or undertaking." Packard v. Richardson, 17 Mass. 131, 9 Am.Dec. 123.

—Bargain money. These words in a contract for the sale of land have much the same significance as earnest money. Morgan v. Forbes, 236 Mass. 480, 128 N.E. 792, 793.

—Catching bargain. A bargain by which money is loaned, at an extortionate or extravagant rate, to an heir or any one who has an estate in reversion or expectancy, to be repaid on the vesting of his interest; or a similar unconscionable bargain with such person for the purchase outright of his expectancy. See Edler v. Frazier, 174 Iowa, 46, 156 N.W. 182, 187. That kind of fraud often perpetrated upon young, inexperienced, or ignorant people. Provident Life & Trust Co. v. Fletcher, C.C.A.N.Y., 258 F. 583, 586.

See Unconscionable Bargain

BARGAIN AND SALE. In conveyancing. The transferring of the property of a thing from one to another, upon valuable consideration, by way of sale. Shep.Touch. (by Preston,) 221.

A contract or bargain by the owner of land, in consideration of money or its equivalent paid, to sell land to another person, called the "bargainee," whereupon a use arises in favor of the latter, to whom the seisin is transferred by force of the statute of uses. Laing v. McClung, 103 W. Va. 341, 137 S.E. 744, 745.

The proper and technical words to denote a bargain and sale are "bargain and sell ;" but any other words that are sufficient to raise a use upon a valuable consideration are sufficient. 2 Wood.Conv. 15; Jackson ex dem. Hudson v. Alexander, 3 Johns. (N.Y.) 484, 3 Am.Dec. 517.

The expression "bargain and sale" is also applied to transfers of personalty, in cases where there is first an executory agreement for the sale, (the *bargain,)* and then an actual and completed sale.

BARGAIN OR CONTRACT IN RESTRAINT OF TRADE. Any bargain or contract which purports to limit in any way right of either party to work or to do business. Stoia v. Miskinis, 298 Mich. 105, 298 N.W. 469, 474.

BARGAINEE. The grantee of an estate in a deed of bargain and sale. The party to a bargain to whom the subject-matter of the bargain or thing bargained for is to go.

BARGAINOR. The person who makes a bargain. The party to a bargain who is to receive the consideration and perform the contract by delivery of the subject-matter.

BARGE. Name originally applied to a small sailing vessel but afterwards came into general use for a flat bottomed boat used for carrying goods on inland waterways. Barges are usually towed or fitted with some kind of engine. The Sakito Maru, D.C.Cal., 41 F.Supp. 769, 778.

BARK. It is sometimes figuratively used to denote the mere words or letter of an instrument, or outer covering of the ideas sought to be expressed, as distinguished from its inner substance or essential meaning. "If the bark makes for them, the pith makes for us." Bacon.

BARLEYCORN. In linear measure. The third of an inch.

BARMOTE COURTS. Courts held in certain mining districts belonging to the Duchy of Lancaster, for regulation of the mines, and for deciding questions of title and other matters relating thereto. 3 Steph.Comm. 347, note b.

BARN. A covered building for securing productions of the earth. Washington v. Arizona, 46 Ariz. 446, 52 P.2d 476, 478.

It may be both a cornhouse and a stable; State v. Smith, 28 Iowa 565, 568; and has been used interchangeably with stable; Saylor v. Commonwealth, 22 Ky.L.Rep. 472, 57 S. W. 614, 615.

BARNARD'S INN. An inn of chancery. See Inns of Chancery.

BARO. In old law, a man, whether slave or free. In later usage, a freeman or freedman; a strong man; a good soldier; a hired soldier; a vassal; a baron; a feudal tenant or client. A man of dignity and rank; a knight. A magnate in the church. A judge in the exchequer *(baro scaccarii).* The first-born child. A husband.

The word is said by Spelman to have been used more frequently in the last sense; Spelman, Gloss.

BARON. A lord or nobleman; the most general title of nobility in England. 1 Bl.Comm. 398, 399. A particular degree or title of nobility, next to a viscount. The lowest title in Great Britain. A judge of the court of exchequer. 3 Bl.Comm. 44; Cowell. A freeman. Co.Litt. 58a. Also a vassal holding directly from the king. A husband; occurring in this sense in the phrase *"baron et feme,"* husband and wife.

The term has essentially the same meanings as *Baro (q.* v.).

BARON COURT. See Court-Baron.

BARON ET FEME. Man and woman; husband and wife. Spelman, Gloss.; 1 Bla.Comm. 442.

A wife being under the protection and influence of her *baron,* lord, or husband, is styled a *"feme-covert," (fcemina viro cooperta,)* and her state of marriage is called her "coverture." Cummings v. Everett, 82 Me. 260, 19 A. 456.

BARONS OF THE CINQUE PORTS. Members bf parliament from these ports, viz.: Sandwich, Romney, Hastings, Hythe, and Dover. Winchelsea and Rye have been added. See Cinque Ports.

BARONS OF THE EXCHEQUER. The six judges of the court of exchequer in England, of whom one is styled the "chief baron;" answering to the justices and chief justice of other courts.

BARONAGE. In English law. The collective body of the barons, or of the nobility at large. Spelman.

BARONES SCACCARII. See Barons of the Exchequer.

BARONET. An English name or hereditary title of dignity or rank (but not a title of nobility, being next below that of baron), established in 1611 by James I. It is created by letters patent, and descends to the male heir. Spelman.

BARONY. The dignity of a baron; a species of tenure; the territory or lands held by a baron. Spelman; 2 Holdsw.Hist.Eng.L. 159.

In Scotland, a large freehold estate, even though the proprietor is not a baron. See Barony of Land, *infra.*

BARONY OF LAND. In England, a quantity of land amounting to 15 acres. In Ireland, a subdivision of a county.

BARRA, or BARRE. In old practice. A plea in bar. The bar of the court. A barrister.

BARRATOR. One who commits barratry. See Barretor,

BARRATROUS. Fraudulent; having the character of barratry.

BARRATRY. In criminal law. Also spelled "Barretry." The offense of frequently exciting and stirring up quarrels and suits, either at law or otherwise. 4 Bla.Com. 134; State v. Batson, 220 N.C. 411, 17 S.E.2d 511, 512, 513.

Common barratry is the practice of exciting groundless judicial proceedings. Pen.Code Cal. § 158; Lucas v. Pico, 55 Cal. 128; Corn. v. McCulloch, 15 Mass. 229; Ex parte McCloskey, 82 Tex.Cr.R. 531, 199 S.W. 1101, 1102.

In maritime law. An act committed by the master or mariners of a vessel, for some unlawful or fraudulent purpose, contrary to their duty to the owners, whereby the latter sustain injury. It may include negligence, if so gross as to evidence fraud. Hansen v. Barnard, C.C.A.N.Y., 270 F. 163, 166.

Some fraudulent act of the master or mariners, tending to their own benefit, to the prejudice of the owner of the vessel, without his privity or consent. Kendrick *v.* Delafield, 2 Caines N.Y. 67.

A generic term, which includes many acts of various kinds and degrees. It comprehends any unlawful, fraudulent, or dishonest act of the master or mariners, and every violation of duty by them arising from gross and culpable negligence contrary to their duty to the owner of the vessel, and which might work loss or injury to him in the course of the voyage insured. A mutiny of the crew, and forcible dispossession by them of the master and other officers from the ship, is a form of barratry. Greene v. Pacific Mut. Ins. Co., 9 Allen, Mass., 217.

In Scotch law. The crime committed by a judge who receives a bribe for his judgment. Skene; Brande.

See Champerty.

BARRED. Obstructed by a bar; subject to hindrance or obstruction by a bar or barrier which, if interposed, will prevent legal redress or recovery; as, when it is said that a claim or cause of action is "barred by the statute of limitations." Wilson v. Knox County, 132 Mo. 387, 34 S.W. 45, 477.

BARREL. A measure of capacity, equal (in England) to 36 imperial gallons. The standard United States measure, except as to barrels of petroleum, equals 31 1/2 gallons. Pope v. Joschke, Tex.Civ. App., 228 S.W. 986, 987.

In agricultural and mercantile parlance, as also in the inspection laws, the term means, *prima facie,* not merely a certain quantity, but, further, a certain state of the article; namely, that it is in a cask. State v. Moore, 33 N.C. 72.

BARREN MONEY. In the civil law. A debt which bears no interest.

BARRENNESS. Sterility; the incapacity to bear children.

BARRETOR. In criminal law. A common mover, exciter, or maintainer of suits and quarrels either in courts or elsewhere in the country; a disturber of the peace who spreads false rumors and calumnies, whereby discord and disquiet may grow among neighbors. Co.Litt. 368.

Common Barretor

One who frequently excites and stirs up groundless suits and quarrels, either at law or otherwise. Mate v. Batson, 220 N.C. 411, 17 S.E.2d 511, 512, 513.

BARRETRY. In criminal law. The act or offense of a barretor, *(q. v.;)* usually called "common barretry." 4 Steph.Comm. 262. See Barratry.

BARRICADE. An obstruction or block to prevent passage. Schawe v. Leyendecker, Tex.Civ.App., 269 S.W. 864, 866; Crowley v. City of Raymond, 198 Wash. 432, 88 P.2d 858, 859.

BARRIER. A fence. Page Steel & Wire Co. v. Smith Bros. Hardware Co., C.C.A.Ohio, 64 F.2d 512.

In mining law and the usage of miners, a wall of coal left between two mines.

BARRISTER. In English law. An advocate; a counsellor learned in the law who has been admitted to plead at the bar, and who is engaged in conducting the trial or argument of causes.

To be distinguished from the *attorney,* who draws the pleadings, prepares the testimony, and conducts matters out of court. In re Rickert, 66 N.H. 207, 29 Atl. 559, 24 L. R.A. 740.

See King's Counsel.

Inner Barrister

A serjeant or king's counsel who pleads within the bar.

Junior Barrister

A barrister under the rank of queen's counsel. Also the junior of two counsel employed on the same side in a case. Mozley & Whitley.

Outer or Utter Barrister

One who pleads "outer" or without the bar.

Such barristers were so called because they sat "uttermost on the forms of the benchers which they call the bar." 29 L.Q.R. 25. They are distinguished from benchers, or those who have been readers, and are allowed to plead within the bar, as are the king's counsel.

Utter Barrister

The same as "Outer barrister," *supra.*

Vacation Barrister

A counsellor newly called to the bar, who is to attend for several long vacations the exercises of the house.

BART. The usual abbreviation for *Baronet (q. v.).*

BARTER. A contract by which parties exchange goods or commodities for other goods. Finker v. Boyer, 331 Mo. 1242, 56 S.W.2d 372.

It differs from *sale,* in this : that in the latter transaction goods or property are always exchanged for money. Guerreiro v. Peile, 3 Barn. & Ald. 617; Cooper v. State, 37 Ark. 418; Meyer v. Rousseau, 47 Ark. 460, 2 S. W. 112. In a sale there is a fixed price; in a barter there is not. Speigle v. Meredith, 4 Biss. 120, Fed.Cas.No.13,227.

This term is not applied to contracts .concerning land, but to such only as relate to goods and chattels. Speigle v. Meredith, 4 Biss. 123, Fed.Cas.No.13,227.

It sometimes signifies a corrupt transaction. In re Troy, 43 R.I. 279, 111 A. 723, 724.

BARTON. In old English law. The demesne land of a manor; a farm distinct from the mansion.

Sometimes it is used for the manor house itself ; and in some places for out houses and fold yards. In tifé statute-2 & 3 Edw. 6, c. 12, Barton lands and demesne lands are-used as synonymous. Cowell.

BAS. Fr. Low; inferior; subordinate.

BAS CHEVALIERS. In old English law. Low, or inferior knights, by tenure of a base military fee, as distinguished from *barons* and *bannerets,* who were the chief or superior knights. Cowell; Kennett, Paroch.Ant.; Blount.

BAS VILLE, In French law. The suburbs of a town.

BASAL FRACTURE. A fracture of the skull beginning at the base of the skull to the rear and left extending to the top of the skull. Marland Refining Co. v. McClung, 102 Okl. 56, 226 P. 312, 313.

BASE, *adj.* Low; inferior; servile; of subordinate degree; impure, adulterated, or alloyed.

—Base animal. See Animal.

—Base bullion. Base silver bullion is silver in bars mixed to a greater or less extent with alloys or base materials. Hope Min. Co. v. Kennon, 3 Mont. 44.

—Base coin. Debased, adulterated, or alloyed coin. Gabe v. State, 6 Ark. 540; Cohens v. Virginia, 6 Wheat. 333, 5 L.Ed. 257.

—Base court. In English law. An inferior court, that is, not of record, as the court baron. Cunningham; Kitch. 95, 96; Cowell.

—Base estate. The estate which "base tenants" *(q.* v.) have in their land. Cowell.

—Base fee. In English law. An estate or fee which has a qualification subjoined thereto, and which must be determined whenever the qualification annexed to it is at an end. 2 Bl.Comm. 109. Wiggins Ferry Co. v. Railroad Co., 94 Ill. 93; Scobey v. Beckman, 111 Ind.App. 574, 41 N.E.2d 847, 850.

It is a fee for the reason that it may last forever if the contingency does not happen, but debased because its duration depends upon collateral circumstances which qualify it. McIntyre v. Dietrich, 128 N.E. 321, 322, 294 Ill. 126; sometimes called a conditional fee; Citizens' Electric Co. v. Susquehanna Boom Co., 113 A. 559, 561, 270 Pa. 517; a determinable fee; Penick v. Atkinson, 77 S.E. 1055, 1057, 139 Ga. 649, 46 L.R.A.,N.S., 284, Ann.Cas.1914B, 842; or a qualified fee; In re Douglass' Estate, 143 N.W. 299, 302, 94 Neb. 280, Ann.Cas.1914D, 447. Burche v. Neal, 149 S.E. 611, 612, 107 W.Va. 559.

—Base infeftment. In Scotch law. A disposition of lands by a vassal, to be held of himself.

—Base right. In Scotch law. A subordinate right; the right of a subvassal in the lands held by him. Bell.

—Base services. In feudal law. Such services as were unworthy to be performed by the nobler men, and were performed by the peasants and those of servile rank. 2 Bla.Comm. 62; 1 Washb. R.P. 25.

—Base tenants. Tenants who performed to their lords services in villenage; tenants who held at the will of the lord, as distinguished from *frank* tenants, or freeholders. Cowell.

—Base tenure. A tenure by villenage, or other customary service, as distinguished from tenure by military service; or from tenure by free service. Cowell.

BASE, n. Bottom, foundation, groundwork, that on which a thing rests. Webster.

The locality on which a military or naval force relies for supplies or from which it initiates operations. Webster. For example: air base; military base; marine base; naval base; submarine base.

—Base Hospital. See Hospital.

—Air Base. A military or naval establishment forming a center of supporting activities for the military or naval air arm; a training center for air corps personnel; a place where equipment and supplies of the air corps are kept. The term is included in the word *fort.* Greenville Baseball v. Bearden, 200 S.C. 363, 20 S.E.2d 813, 816.

—Submarine Base. A naval base for the housing, repair and maintenance of submarines, for keeping supplies; a place where personnel is trained; a place from which operations are initiated.

BASED UPON. Means an initial or starting point for calculation. State ex rel. Snidow v. State Board of Equalization, 93 Mont. 19, 17 P.2d 68.

BASEBALL. A game of skill within the criminal offense of betting on such a game. Mace v. State, 58 Ark. 79, 22 S.W. 1108.

When played by professionals for profit, it is a performance of worldly employment and business within the Sunday Law of Pennsylvania. Commonwealth v. American Baseball Club of Philadelphia, 290 Pa. 136, 138 A. 497, 53 A. L. R. 1027.

BASEMENT. A floor partly beneath the surface of the ground but distinguished from a cellar by being well lighted and fitted for living purposes. In England the ground floor of a city house.

BASIC OR PIONEER PATENT. One discovered in new field and recognized by scientific world or industry as startling, unexpected, and unprophesied. Northwest Engineering Corporation v. Keystone Driller Co., C.C.A.Wis., 70 F.2d 13, 16.

BASILEUS. A Greek word, meaning "king." A. title assumed by the emperors of the Eastern Roman Empire. It is used by Justinian in some of the Novels; and is said to have been applied to the English kings before the Conquest. See 1 Bl. Comm. 242.

BASILICA. The name given to a compilation of Roman and Greek law, prepared about A.D. 880 by the Emperor Basilius, and published by his successor, Leo the Philosopher. It was written in Greek, was mainly an abridgment of Justinian's *Corpus Juris,* and comprised sixty books, only a portion of which are extant. It remained the law of the Eastern Empire until the fall of Constantinople, in 1453.

BASILS. In old English law. A kind of money or coin abolished by Henry II.

BASIN. When speaking of a large river, ordinarily means or includes the entire area drained by the main stream and its tributaries. City of Tulsa v. Peacock, 181 Okl. 383, 74 P.2d 359, 360.

In admiralty law and marine insurance. A part of the sea inclosed in rocks. U. S. v. Morel, 13 Am.Jur. 286, 26 Fed.Cas. 1,310.

BASIS. Fundamental principle; groundwork; support; foundation; the foundation or groundwork of anything; that upon which anything may rest or the principal component parts of a thing. Tolmie v. San Diego Fruit & Produce Co., 57 Idaho 631, 68 P.2d 61, 64. State v. Kansas City & M. Ry. & Bridge Co., 106 Ark. 248, 153 S.W. 614, 616.

BASKET TENURE. In feudal law. Lands held by the service of making the king's baskets.

BASOCHE. Fr. An association of the "Clercs du Parlement" of Paris, supposed to have been instituted in 1302. It judged all civil and criminal matters that arose among the clerks and all actions brought against them. Hist. for Ready Reference.

BASSA, BASSO, or BASSUS. L. Lat. Low. Adams Gloss.

BASSA TENURA. See Base Fee.

BASSE JUSTICE. In feudal law. Low justice; the right exercised by feudal lords of personally trying persons charged with trespasses or minor offenses.

BASSET. A card game resembling faro. It was invented in Venice, and was widely popular in Europe from about 1650 to' 1800.

BASTARD. An illegitimate child; a child born of an unlawful intercourse, and before the lawful marriage of its parents. Pettus v. Dawson, 82 Tex. 18, 17 S.W. 714.

A child born after marriage, but under circumstances which render it impossible that the husband of his mother can be his father. State v. Coliton, 73 N.D. 582, 17 N.W.2d 546, 548, 549, 156 A.L.R. 1403.

A child is not a bastard if born after marriage, although begotten before. 1 Bla.Com. 455, 456; 8 East, 210; State v. Herman, 35 N.C. 502.

One begotten and born out of lawful wedlock. Ex parte Newsome, 212 Ala. 168, 102 So. 216, 218.

This definition, which is substantially the same as Blackstone's, is open to the objection that it does not include with sufficient certainty those cases where children are born during wedlock but are not the children of the mother's husband.

Such children as are not born either in lawful wedlock or within a competent time after its determination. In re Paterson's Estate, 34 Cal.App.2d 305, 93 P.2d 825, 827.

One born of an illicit union. Civ.Code La. arts. 27, 197.

The term also includes a child born of parents while in a state of slavery, inasmuch as the parents were under disability to contract marriage. Cole v. Taylor, 132 Tenn. 92, 177 S. W. 61, 65.

In Louisiana, "bastards," as distinguished from "natural children," are illegitimate children who have not been acknowledged by their parents. "Natural children" are those who have been acknowledged by both or either of their parents. Briggs v. McLaughlin, 134 La. 133, 63 SO. 851, 852.

—Bastard eigne. In old English law. Bastard. elder. If a child was born of an illicit connection, and afterwards the parents intermarried and had another son, the elder was called bastard eigne, or, as it is now spelled, aine, and the second son was called puisne, or since born, or sometimes he was called mulier puisne. 2 Bla.Comm. 248.

—Special bastard. One born of parents before marriage, the parents afterward intermarrying. 3 Bl.Comm. 335.

By the civil and Scotch law, as well as by the statute law prevailing in over half of the states of the Union, the child would then be legitimated.

BASTARDA. A female bastard. Calvinus, Lex.; Fleta, lib. 5, c. 5, § 40.

BASTARDIZE. To declare one a bastard, as a court does. To give evidence to prove one a bastard. A mother (married) cannot bastardize her child.

BASTARDUS NON POTEST HABERE ILEREDEM NISI DE CORPORE SUO LEGITIME PROCREATUM. A bastard can have no heir unless it be one lawfully begotten of his own body. Tray. Lat.Max. 51.

BASTARDUS NULLIUS EST FILIUS, AUT FILIUS POPULI. A bastard is nobody's son, or the son of the people.

BASTARDY. The offense of begetting a bastard child. The condition of a bastard. Dinkey v. Com., 17 Pa. 129, 55 Am.Dec. 542.

BASTARDY PROCESS. The method provided by statute of proceeding against the putative father to secure a proper maintenance for the bastard.

It is of a special character in nature of civil action. In re Mitchell, 189 Okl. 51, 113 P.2d 979, 980.

BASTON. In old English law, a baton, club, or staff. A term applied to officers of the wardens of the prison called the "Fleet," because of the staff carried by them. Cowell; Spelman; Termes de la Ley. See Justices of Trail-Baston.

BATABLE-GROUND. Land that is in controversy, or about the possession of which there is a dispute, as the lands which were situated between England and Scotland before the Union. Skene.

BATAILLE. In old English law. Battel; the trial by combat or *duellum.*

BATH, KNIGHTS OF THE. See Knights of the Bath.

BATIMENT. In French marine law. A vessel or ship.

BATONNIER. The chief of the French bar in its various centres, who presides in the council of discipline. Arg.Fr.Merc.Law, 546.

BATTEL. Trial by combat; wager of battel. See Wager of Battel.

BATTERY. Any unlawful beating, or other wrongful physical violence or constraint, inflicted on a human being without his consent. Goodrum v. State, 60 Ga. 511.

A willful and unlawful use of force or violence upon the person of another. Long v. Rogers, 17 Ala. 540. An unlawiuLtauching of the person of another by the agre.agr apasalf, or any otliEf SUbstance put in motion by him. Kirland v. State, 43 Ind. 153, 13 Am.Rep. 386; Commonwealth v. Remley, 257 Ky. 209, 77 S.W.2d 784. The consummation of an unlawful assault. State v. Hamburg, Del., 143 A. 47, a8. The sri 'of another or of his clothes or an' thi I • - che•to hi -rson • one in a de, nsolent. or anzr[y] manner. Booher v. Trainer, 172 o.App. 376, 157 S.W. 848, 850; Commonwealth v. Gregory, 132 Pa. Super. 507, 1 A.2d 501, 503.

The artnal off[p]r to use force to th9 iniuri_aannther person *is assault;* the use of it is *battery,yantich* always includes an assa ; Thence the two terms are commonly 76-[g]Bined n t e term "assault and battery." Harris v. State, 15 Okl.Cr. 369, 177 P. 122, 123.

A surgical operation is a technical "battery" regardless of its result, and is excusable only when there is express or implied consent by the patient. Bonner v. Moran, 126 F.2d 121, 122, 75 U.S.App.D.C. 156, 139 A.L.R. 1366.

—Assault and Battery of a High and Aggravated Nature. An unlawful act of violent injury to the person of another, accompanied by circumstances of aggravation, such as the use of deadly weapon, great disparity between the ages and physical conditions of the parties, or the purposeful infliction of shame and disgrace. State v. Jones, 133 S.C. 167, 130 S.E. 747, 751.

—Simple Battery. One not accompanied by circumstances of aggravation, or not resulting in grievous bodily injury.

BATTONIER. In French and Canadian law. A member of the bar selected as the head of the bar.

BATTURE. According to Richelet and the French Academy, a marine term, used to denote a bottom of sand, stone, or rock, mixed together, and rising towards the surface of the water; as a technical word and also in common parlance, an elevation of the bed of a river, under the surface of the water. The term is, however, sometimes used to denote the same elevation of the bank, when it has risen above the surface of the water, or is as high

as the land on the outside of the bank. Conkey v. Knudsen, 143 Neb. 5, 8 N.W.2d 538, 541.

In this latter sense it is synonymous with "alluvion." It means, in common-law language, land formed by accretion. Producers' Oil Co. v. Hanszen, 132 La. 691, 61 So. 754.

The term is used in Louisiana, and is applied principally to certain portions of the bed of the Mississippi river which are uncovered at time of low water but are covered annually at time of ordinary high water. Boyce Cottonseed Oil Mfg. Co. v. Board of Com'rs of Red River, Atchafalaya & Bayou Bceuf Levee Dist., 160 La. 727, 107 So. 506, 508.

BAUXITE. An earth containing aluminum in sufficient quantities to make it worth working for the extraction of alumina. American Bauxite Co. v. Board of Equalization of Saline County, 119 Ark. 362, 177 S.W. 1151, 1152. United States v. Aluminum Co. of America, D.C.N.Y., 44 F.Supp. 97, 109.

BAWD. One who procures opportunities for persons of opposite sexes to cohabit in an illicit manner; who may be, while exercising the trade of a bawd, perfectly innocent of committing in his or her own proper person the crime either of adultery or of 'fornication. See Dyer v. Morris, 4 Mo. 216.

BAWDY-HOUSE. A house of ill fame; a house of prostitution; a brothel. A house or dwelling maintained for the convenience and resort of persons desiring unlawful sexual connection. Davis v. State, 2 Tex.App. 427; State v. Porter, 38 Ark. 638; People v. Buchanan, 1 Idaho 689. An assignation house. State v. Bragg, Mo.App., 220 S.W. 25, 26. A disorderly house. Putman v. State, 9 Okl.Cr. 535, 132 P. 916, 921, 46 L.R.A.,N.S., 593.

To constitute a bawdy-house, the house must be "resorted to" or "frequented," that is to say, used a number of times, by lewd people of both sexes. State v. Seba, Mo. App., 200 S.W. 300; but need not be inhabited or resorted to by more than one woman for purpose of prostitution. Trent v. Commonwealth, 181 Va. 338, 25 S.E.2d 350, 351.

BAY. A pond-head made of a great height to keep in water for the supply of a mill, etc., so that the wheel of the mill may be turned by the water rushing thence, through a passage or flood-gate. St. 27 Eliz. c. 19. (This is generally called a forebay.)

A bending or curving of the shore of the sea or of a lake, so as to form a more or less inclosed body of water. State v. Town of Gilmanton, 14 N.H. 477. An opening into the land, or an arm of the sea, where the water is shut in on all sides except at the entrance. Mayo v. New York Cent. R. Co., 263 N.Y. 277, 189 N.E. 217, 218.

BAYGALL. A low-lying wet land matter with vegetable fibres and often with gallberry and other thick-growing bushes. McNeal v. Carter, 191 Ga. 441, 12 S.E.2d 332, 333.

BAY WINDOW. A window projecting from the wall of a building so as to form a recess or bay within, and, properly speaking, rising from the ground or basement, with straight sides only; but the term is also ordinarily applied to such projecting windows with curved sides, properly called bow windows, and also to projecting windows supported from the building, above the ground, properly called oriel windows. Hieronimus v. Moran, 272 Ill. 254, 111 N.E. 1022, 1023.

BAYLEY. In old English law. Bailiff. This term is used in the laws of the colony of New Plymouth, Mass., A.D. 1670, 1671. Burrill.

BAYOU. A species of creek or stream common in Louisiana and Texas. An outlet from a swamp, pond, or lagoon, to a river, or the sea. See Surgett v. Lapice, 8 How. 48, 70, 12 L.Ed. 982.

BEACH. This term, in its ordinary signification, when applied to a place on tide waters means the space between ordinary high and low water mark; East Hampton v. Kirk, 6 Hun (N.Y.) 257; or the space over which the tide usually ebbs and flows. It is a term not more significant of a sea margin than "shore." Niles v. Patch, 13 Gray (Mass.) 257; Hodge v. Boothby, 48 Me. 68.

In common parlance designates that portion of shore consisting generally of sand and pebbles, resulting usually from the action of water, as distinct from the upland, to which it often extends above normal high-water mark. Borden v. Town of Westport, 112 Conn. 152, 151 A. 512, 515.

Beach is synonymous with "shore," "strand," or "flats." Littlefield v. Littlefield, 28 Me. 180.

The term may also include the sandy shore above mean high water which is washed by storms and exceptionally high tides. Newkirk v. Sherwood, 94 A. 982, 984, 89 Conn. 598.

To "beach" a ship is to run it upon the beach or shore; this is frequently found necessary in case of a fire, leak, etc.

See Foreshore; Sea-Shore.

Public Beach

One left by the state or others claiming it open to the common use of the public, which the unorganized public and each of its members have a right to use while it remains such. Brower v. Wakeman, 88 Conn. 8, 89 A. 913, 914.

BEACON. A light-house, or sea-mark, formerly used to alarm the country, in case of the approach of an enemy, but now used for the guidance of ships at sea, by night, as well as by day.

BEACONAGE. Money paid for the maintenance of a beacon or signal-light. Comyns, Dig. *Navigation (H).*

BEADLE. In English ecclesiastical law. An inferior parish officer, who is chosen by the vestry, and whose business is to attend the vestry, to give notice of its meetings, to execute its orders, to attend upon inquests, and to assist the constables. Wharton. See, also, Bedel.

BEAMS AND BALANCE. Instruments for weighing goods and merchandise.

BEAR. To support, sustain, or carry; to give rise to, or to produce, something else as an incident or auxiliary. See Stevenson v. Mellor, 252 Pa. 219, 97 A. 393, 394; to render, to manage, or direct, or to conduct; to carry on, or maintain ;

to be answerable for, and to defray. Teeter v. Mid-West Enterprise Co., 174 Okl. 644, 52 P.2d 810, 812.

BEAR ARMS. To carry arms as weapons and with reference to their military use, not to wear them about the person as part of the dress. Aymette v. State, 2 Humph. (Tenn.) 158.

As applied to fire-arms, includes the right to load and shoot them, and to use them as such things are generally used. Hill v. State, 53 Ga. 480.

BEAR INTEREST. To generate interest, so that the instrument or loan spoken of shall produce or yield interest at the rate specified by the parties or granted by law. Slaughter v. Slaughter, 21 Ind. App. 641, 52 N.E. 995.

BEARER. One who bears, carries, or holds a thing. Defined by the Negotiable Instruments Act as the person in possession of a bill or note which is payable to bearer. Miller v. People's Say. Bank, 193 Mo.App. 498, 186 S.W. 547, 550.

When a check, note, draft, etc., is payable to "bearer," it imports that the contents thereof shall be payable to any person who may present the instrument for payment. Thompson v. Perrine, 106 U.S. 589, 1 S.Ct. 564, 568, 27 L. Ed. 298.

BEARERS. In old English law. Such as bear down or oppress others; maintainers. Cowell.

BEARING DATE. Disclosing a date on its face; having a certain date. Words frequently used in pleading and conveyancing to introduce the date which has been put upon an instrument. See 2 Greenl.Ev. § 160; 2 Dowl. & L. 759.

BEAST. An animal; a domestic animal; a quadruped, such as may be used for food or in labor or for sport; *e. g.,* a cow; Taylor v. State, 6 Humph. (Tenn.) 285; a horse; Winfrey v. Zimmerman, 8 Bush (Ky.) 587; and a hog; State v. Enslow, 10 Iowa, 115; but a dog was held not to be; U. S. v. Gideon, 1 Minn. 292 (Gil. 226) ; but see Morewood v. Wakefield, 133 Mass. 241.

BEASTS OF THE CHASE. In English law. Properly, the buck, doe, fox, martin, and roe, but in a common and legal sense extending likewise to all the beasts of the forest, which beside the others are reckoned to be the hind, hare, bear, and wolf, and, in a word, all wild beasts of ^Yenery or hunting. Co.Litt. 233; 2 Bla.Comm. 39.

BEASTS OF THE FOREST. In English law. The hart, hind, hare, boar, and wolf. Co.Litt. 233a. See Beasts of the Chase.

BEASTS OF THE PLOW. An old term for animals employed in the operations of husbandry, including horses. Somers v. Emerson, 58 N.H. 49.

BEASTS OF THE WARREN. In English law. Hares, coneys, and roes. Co.Litt. 233; 2 Bla. Comm. 39.

BEASTGATE. In Suffolk, England, imports land and common for one beast. Bennington v. Goodtitle, 2 Strange, 1084; Rosc.Real Act. 485.

BEAT, v. To strike 'or hit repeatedly, as with blows. Regina v. Hale, 2 Car. & K. 327; Com. v. McClellan, 101 Mass. 35; Corn. v. McClellan, 101 Mass. 35.

In the criminal law and the law of torts, with reference to assault and battery, the term includes any unlawful physical violence offered to another. See Battery.

To beat, in a legal sense, is not merely to whip, wound, or hurt, but includes any unlawful imposition of the hand or arm. Goodrum v. State, 60 Ga. 511; Yarbrough v. State, 17 Ga.App. 828, 88 S.E. 710, 711.

BEAT, n. In some of the southern states (as Alabama, Mississippi, South Carolina) the principal legal subdivision of a county, corresponding to towns or townships in other states; or a voting precinct. Eaton v. State, 20 Ala.App. 110, 101 So. 94, 95.

BEATING OF THE BOUNDS. An ancient custom in England by which, once a year, the minister, etc., of a parish walked about its boundaries to preserve a recollection of them. Cent.Dict. (Perambulation).

BEAUPLEADER. (L. Fr. fair pleading). A writ of prohibition directed to the sheriff or another, directing him not to take a fine for beaupleader.

There was anciently a fine imposed called a fine for beaupleader, which is explained by Coke to have been originally imposed for bad pleading. Coke, 2d Inst. 123. The statute of Marlebridge (52 Hen. III.) c. 11, enacts, that neither in the circuit of justices, nor in counties, hundreds, or courts-baron, any fines shall be taken for *fair pleading;* namely, for not pleading fairly or aptly to the purpose. Upon this statute this writ was ordained, directed to the sheriff, bailiff, or him who shall demand the fine; and it is a prohibition or command not to do it. Cowell; Co. 2d Inst. 122; Crabb, Eng.Law 150.

BEAUTY CULTURE. Generally, the means employed to improve personal appearance, is an occupation operating directly on the person. Hoff v. State, Del.Super., 197 A. 75, 78, 81.

BECAUSE OF. For. Kelly v. State Personnel Board of California, 31 Cal.App.2d 443, 88 P.2d 264, 266.

BECAUSE OF EMPLOYMENT. In this phrase as used in the Workmen's Compensation Act, excepting an employer from liability for the willful act of a third person directed against an employee because of his employment, the words "because of" are not synonymous with "caused by" but with "on account of," or "by reason of." Saucier's Case, 122 Me. 325, 119 A. 860, 861.

BECOME. To pass from one state to another; to enter into some state or condition.

Hence one who is a member of a particular organization at the time of the enactment of a statute making it a felony to "become" a member of such an organization cannot be said to be within the purview of the act. State v. Laundy, 103 Or. 443, 204 P. 958, 963.

BED. The hollow or channel of a water course; the depression between the banks worn by the regular and usual flow of the water.

Soil only which the water occupies sufficiently long and continuously to wrest it from vegetation

and destroy its value for agricultural purposes. State ex rel. O'Connor v. Sorenson, 271 N.W. 234, 236, 222 Iowa 1248.

The land that is covered by the water in its ordinary low stage. Wemple v. Eastham, 150 La. 247, 90 So. 637, 638.

That portion of its soil which is alternately covered and left bare as there may be an increase or diminution in the supply of water, and which is adequate to contain it at its average and mean state during an entire year. Maufrais v. State, 142 Tex. 559, 180 S.W.2d 144, 147.

Area extending between the opposing banks measured from the foot of the banks from the top of the water at its ordinary stage, including sand bars which may exist between the foot of said banks as thus defined. Town of Refugio v. Heard, Tex.Civ.App., 95 S.W.2d 1008, 1010.

It includes the lands below ordinary high water mark. United States v. Chicago, M., St. P. & P. R. Co., 61 S.Ct. 772, 775, 312 U.S. 592, 313 U.S. 543; 85 L. Ed. 1064.

Bed of navigable lake extends to high water mark. Miami Corporation v. State, 186 La. 784, 173 So. 315.

Also, the right of cohabitation or marital intercourse; as in the phrase "divorce from bed and board," or a *mensa et thoro.*

BED OF JUSTICE. In old French law. The seat or throne upon which the king sat when personally present in parliament; hence it signified the parliament itself.

BED-ALE or BID-ALE. A friendly assignation for neighbors to meet and drink at the house of newly married persons or other poor people and then for the guests to contribute to the housekeepers. Cowell. See Bidal.

BEDDING. Covers practically everything, that is to say, mattresses, springs, cots, couches, quilts, cushions, and also the bed itself. Baltimore Bedding Corporation v. Moses, 182 Md. 229, 34 A.2d 338, 340.

BEDEHOUSE. A hospital or almshouse for bedesmen or poor people who prayed for their founders and benefactors. Cunningham.

BEDEL, In English law. A crier or messenger of court, who summons men to appear and answer thvrein. Cowell. A herald to make public proclamations. Cent. Dict.

An officer of the forest, similar to a sheriff's special bailiff. Cowell.

A collector of rents for the king. Plowd. 199, 200.

An inferior officer in a parish or liberty, or in an institution, such as the Blue Coat School in London.

A subordinate officer of a university who walked with a mace before one of the officers on ceremonial occasions and performed other minor duties ordinarily. See Beadle.

BEDELARY. The jurisdiction of a bedel, as a bailiwick is the jurisdiction of a bailiff. Co.Litt. 234b; Cowell.

BEDEREPE. A service which certain tenants were anciently bound to perform, as to reap their landlord's corn at harvest. Said by Whishaw to be still in existence in some parts of England. Blount; Cowell; Whishaw,

BEDEWERI. Those which we now call *banditti;* profligate and excommunicated persons. Cunningham.

BEDLAM. A corruption of *Bethlehem.* The hospital of St. Mary of Bethlehem in London, originally a priory, founded about 1247, but used from about 1400 as an asylum for the insane.

BEEF. Used frequently to mean an animal of the cow species and not beef prepared for market. A beef or one beef is an expression frequently used to designate an animal fit for use as beef, instead of designating it as a steer, a heifer, an ox, or a cow. Davis v. State, 40 Tex. 135.

BEER. A liquor compounded of malt and hops, differing from ales, not so much in its ingredients as in its processes of fermentation.

A brewed liquor made of grain, especially barley, flavored with hops, which has undergone fermentation and contains alcohol. State v. Lynch, 5 Boyce (Del.) 569, 96 A. 32. An alcoholic beverage resulting from the fermentation of cereals or other starchy substances. U. S. v. Standard Brewery, D.C.Md., 260 F. 486, 487.

In its ordinary sense, it denotes a beverage which is intoxicating; Moffitt v. People, 59 Colo. 406, 149 P. 104, 107; Hoskins v. Commonwealth, 171 Ky. 204, 188 S.W. 348, 349; and is within the fair meaning of the words "strong or spirituous liquors," used in the statutes on this subject. Maier v. State, 2 Tex.Civ.App. 296, 21 S.W. 974.

But also held that "liquor," in common parlance, does not ordinarily mean "beer." Lea v. State, 181 S.W.2d 351, 353, 181 Tenn. 378.

Any liquor, whether intoxicating or not, made by the usual process of making beer, although fermentation is arrested to reduce the percentage of alcohol. Brown v. State, 17 Ariz. 314, 152 P. 578, 582.

BEER-HOUSE; BEER-SHOP. In English law. A place where beer is sold to be consumed on the premises; as distinguished from a "beer-shop," which is a place where beer is sold to be consumed off the premises. 16 Ch.Div. 721.

BEFORE. Prior to; preceding. In the presence of; under the official purview of; as in a magistrate's jurat, *"before* me personally appeared," etc. State v. Murnane, 172 Minn. 401, 215 N.W. 863.

Thus, an acknowledgment made to an officer over a telephone wire by one who is not present with the officer, is not an acknowledgment "before" the officer. Hutchinson v. State, 79 Fla. 157, 84 So. 151, 154.

In the absence of any statutory provision governing the computation of time, the authorities are uniform that, where an act is required to be done a certain number of days or weeks *before* a certain other day upon which another act is to be done, the day upon which the first act is done is to be excluded from the computation, and the whole number of days or weeks must intervene before the day fixed for doing the second act. Ward v. Walters, 63 Wis. 44, 22 N.W. 844.

When used as a preposition, does not indicate a period of time as do the prepositions "for," "during," and "throughout," but merely an event or act preceding in time, or earlier than, or previously to, the time mentioned. First Nat. Corporation v. Perrine, 43 P.2d 1073, 1077, 99 Mont. 454.

BEG. To solicit alms or charitable aid. The act of a cripple in passing along the sidewalk and silently holding out his hand and receiving money from passers-by is "begging for alms," within the

meaning of a statute which uses that phrase. In re Haller, 3 Abb.N.C.,N.Y., 65.

BEGA. A land measure used in the East Indies. In Bengal it is equal to about a third part of an acre.

BEGET. See Begotten.

BEGGAR. One who lives by begging charity, or who has no other means of support than solicited alms.

BEGIN. To originate; to come into existence; to start; to institute; to initiate; to commence. People ex rel. Northchester Corporation v. Miller, 31 N.Y.S.2d 586, 587, 263 App.Div. 83.

BEGOTTEN. "To be begotten" means the same as "begotten," embracing all those whom the par; ent shall have begotten during his life, *quos procreaverit.* Cox v. Newby, 85 S.E. 369, 370, 101 S.C. 193. The term is peculiarly and chiefly applicable to a father. Swain v. Bowers, 91 Ind. App. 307, 158 N.E. 598, 601.

BEGUM. In India. A lady, princess, woman of high rank.

BEGUN. In a statute providing that nothing contained in it should affect prosecutions "begun" under any existing act, the word "begun" means both those which have already been begun and those which may hereafter be begun. Lang v. U. S., C.C.A.Ill., 133 F. 201, 66 C.C.A. 255.

BEHALF. Benefit, support, defence, or advantage.

A witness testifies on "behalf" of the party who calls him, notwithstanding his evidence proves to be adverse to that party's case. Richerson v. Sternburg, 65 Ill. 274. See, further, 12 Q.B. 693; 18 Q.B. 512.

BEHAVIOR. Manner of having, holding, or keeping one's self; manner of behaving, whether good or bad; conduct; manners; carriage of one's self, with respect to propriety and morals; deportment. Webster. State v. Roll, 1 Ohio Dec. 284; Schneiderman v. United States, Cal., 63 S.Ct. 1333, 1340, 320 U.S. 118, 87 L.Ed. 1796.

Surety to be of good behavior is a larger requirement than surety to keep the peace. Dalton, *c.* 122; 4 Burns, Just. 355. See Good Behavior.

BEHETRIA. In Spanish law. Lands situated in districts and manors in which the inhabitants had the right to select their own lords.

BEHOOF. Use; benefit; profit; service; advantage. It occurs in conveyances, *e. g.,* "to his and their use and behoof." Stiles v. Japhet, 84 Tex. 91, 19 S.W. 450.

BEING STRUCK. Collision, or striking together of two objects, one of which may be stationary. Davilla v. Liberty Life Ins. Co., 114 Cal.App. 308, 299 P. 831, 834.

BELIEF. A conviction of the truth of a proposition, existing subjectively in the mind, and induced by argument, persuasion, or proof addressed to the judgment. Keller v. State, 102 Ga. 506, 31 S.E. 92. Latrobe v. J. H. Cross Co., D.C.Pa., 29 F.2d 210, 212. A conclusion arrived at from external sources after weighing probability. Ex parte State ex rel. Attorney General, 100 So. 312, 313, 211 Ala. 1.

Conviction of the mind, arising not from actual perception or knowledge, but by way of inference, or from evidence received or information derived from others.

A conviction of the truth of a given proposition or an alleged fact resting upon grounds insufficient to constitute positive knowledge. Boone v. Merchants' & Farmers' Bank, D.C.N.C., 285 F. 183, 191.

With regard to things which make not a very deep impression on the memory, it may be called "belief." "Knowledge" is nothing more than a man's firm belief. The difference is ordinarily merely in the degree; to be judged of by the court, when addressed to the court; by the jury, when addressed to the jury. Hatch v. Carpenter, 9 Gray (Mass.) 274.

Knowledge is an assurance of a fact or proposition founded on perception by the senses, or intuition; while "belief" is an assurance gained by evidence, and from other persons. Brooks v. Sessoms, 47 Ga.App. 554, 171 S.E. 222, 224.

"Suspicion" is weaker than "belief," since suspicion requires no real foundation for its existence. while "belief" is necessarily based on at least assumed facts. Pen. Code, § 836, subd. 3. Cook v. Singer Sewing Mach. Co., 32 P.2d 430, 431, 138 Cal.App. 418.

BELLIGERENCY. In international law. The status of *de facto* statehood attributed to a body of insurgents, by which their hostilities are legalized.

Before they can be recognized as belligerents they must have some sort of political organization and be carrying on what in international law is regarded as legal war. There must be an armed struggle between two political bodies, each of which exercises *de facto* authority over persons within a determined territory, and commands an army which *is* prepared to observe the ordinary laws of war. Moore, Int. Law Dig. I, 196; Dana's Wheaton, note 15, page 35; In re Jones, 71 W.Va. 567, 77 S.E. 1029, 45 L.R.A.,N.S., 1030, Ann.Cas.1914C, 31.

Quality of being belligerent; status of a belligerent; act or state of waging war ; warfare. Webster's New Int. Diet.

BELLIGERENT. In international law. As an adjective, it means engaged in lawful war. As a noun, it designates either of two nations which are actually in a state of war with each other, as well as their allies actively co-operating, as distinguished from a nation which takes no part in the war and maintains a strict indifference as between the contending parties, called a "neutral." U. S. v. The Ambrose Light, D.C.N.Y., 25 F. 412; Johnson v. Jones, 44 Ill. 151, 92 Am.Dec. 159.

BELLIGERENTS. A body of insurgents who by reason of their temporary organized government are regarded as conducting lawful hostilities. Also, militia, corps of volunteers, and others, who although not part of the regular army of the state, are regarded as lawful combatants provided they observe the laws of war. See Ex parte Toscano, D.C.Cal., 208 F. 938. See, also, Belligerency.

Bello parta cedunt reipublic. Things acquired in war belong or go to the state. 1 Kent, Comm. 101; 5 C.Rob.Adm. 173, 181; The Joseph, 1 Gall. 558, Fed.Cas.No.7,533. The right to all captures vests primarily in the sovereign. A fundamental maxim of public law. Cited 2 Russ. & M. 56.

BELLUM. Lat. In public law. War. An armed contest between nations; the state of those who forcibly contend with each other. *Jus belli,* the law of war.

BELONG. To appertain to; to be the property of. Property "belonging" to a person has two general meanings: (1) ownership; People ex rel. Gill v. Lake Forest University, 367 Ill. 103, 10 N.E.2d 667, 671; and (2) less than ownership, *i. e.,* less than an unqualified and absolute title, such as the absolute right of user. City and County of San Francisco v. McGovern, 28 Cal.App. 491, 152 P. 980, 984.

A road may be said with perfect propriety to belong to a man who has the right to use it as of right although the soil does not belong to him; 31 L.J.Ex. 227.

When used in public and private statutes, and especially when used in reference to inhabitancy, the poor, etc., designates the place of a person's legal settlement, and not merely his place of residence. City of Bridgeport v. Town of Greenwich, 165 A. 797, 116 Conn. 537.

BELONGING. That which is connected with a principal or greater thing; an appendage, an appurtenance; also ownership. Church of the Holy Faith v. State Tax Commission, 39 N.M. 403, 48 P.2d 777, 779.

BELONGINGS. That which belongs to one; property; possessions ;—a term properly used to express ownership. In a will. Ford's Adm'r v. Wade's Adm'r, 242 Ky. 18, 45 S.W.2d 818, 820.

BELOW. In practice. Inferior; of inferior jurisdiction, or jurisdiction in the first instance. The court from which a cause is removed for review is called the "court *below."*

Preliminary; auxiliary or instrumental.

Bail to the sheriff is called "bail *below,"* as being preliminary to and intended to secure the putting in of bail above, or special bail. See Bail.

BENCH. A seat of judgment or tribunal for the administration of justice; the seat occupied by judges in courts; also the court itself, or the aggregate of the judges composing a court, as in the phrase "before the full bench."

The judges taken collectively, as distinguished from counsellors and advocates, who are called the bar.

The term, indicating originally the seat of the judges, came to denote the body of judges taken collectively, and also the tribunal itself, as the King's Bench.

In English ecclesiastical law. The aggregate body of bishops.

BENCH LEGISLATION. See *Judge-made law* under the title Judge.

BENCH WARRANT. Process issued by the court itself, or "from the bench," for the attachment or arrest of a person; either in case of contempt, or where an indictment has been found, or to bring in a witness who does not obey the *subpœna.* So called to distinguish it from a warrant, issued by a justice of the peace, alderman, or commissioner. Oxford v. Berry, 204 Mich. 197, 170 N.W. 83, 87,

BENCHERS. In English law. Seniors in the Inns of Court, intrusted with their government, and usually, but not necessarily, king's counsel, elected by co-optation, and having the entire management of the property of their respective inns.

BENE. Lat. Well; in proper form; legally; sufficiently.

BENEDICTA EST EXPOSITIO QUANDO RES REDIMITUR A DESTRUCTIONE. 4 Coke, 26. Blessed is the exposition when anything is saved from destruction. It is a laudable interpretation which gives effect to the instrument, and does not allow its purpose to be frustrated.

BENEFICE. In ecclesiastical law. In its technical sense, this term includes ecclesiastical preferments to which rank or public office is attached, otherwise described as ecclesiastical dignities or offices, such as bishoprics, deaneries, and the like; but in popular acceptation, it is almost invariably appropriated to rectories, vicarages, perpetual curacies, district churches, and endowed chapelries. 3 Steph.Comm. 77.

"Benefice" is a term derived from the feudal law, in which it signified a permanent stipendiary estate, or an estate held by feudal tenure. 4 Bl.Comm. 107.

BENEFICE. Fr. In French law. A benefit or advantage, and particularly a privilege given by, the law rather than by the agreement of the parties.

BENEFICE DE DISCUSSION. Benefit of discussion. The right of a guarantor to require that the creditor should exhaust his recourse against the principal debtor before having recourse to the guarantor himself.

BENEFICE DE DIVISION. Benefit of division; right of contribution as between co-sureties.

BENEFICE D'INVENTAIRE. A term which corresponds to the *beneficium* inventarii of Roman law, and substantially to the English law doctrine that the executor properly accounting is only liable to the extent of the assets received by him.

BENEFICIAIRE. The person in whose favor a promissory note or bill of exchange is payable; or any person in whose favor a contract of any description is executed. Arg.Fr.Merc.Law. 547.

BENEFICIAL. Tending to the benefit of a person; yielding a profit, advantage, or benefit; enjoying or entitled to a benefit or profit. This term is applied both to estates (as a "beneficial interest") and to persons (as "the beneficial owner"). Kolb v. Landes, 277 M. 440, 115 N.E. 539, 541; In re Williams' Will, 50 Mont. 142, 145 P. 957, 959.

BENEFICIAL OR BENEVOLENT ASSOCIATION. A voluntary association for mutual assistance in time of need and sickness, and for the care of families of deceased members. Lafferty v. Supreme Council Catholic Mut. Ben. Ass'n, 259 Pa. 452, 103 A. 280, 281; but also held to include incorporated organizations. State v. Texas

Mut. Life Ins. Co. of Texas, Tex.Civ.App., 51 S.W. 2d 405, 410.

Another name for a "benefit society;" "benevolent society," and "fraternal" or "friendly society." State v. Texas Mut. Life Ins. Co. of Texas, Tex.Civ.App., 51 S.W.2d 405, 410.

BENEFICIAL ENJOYMENT. The enjoyment which a man has of an estate in his own right and for his own benefit, and not as trustee for another. 11 H.L.Cas. 271.

BENEFICIAL ESTATE. An estate in expectancy is one where the right to the possession is postponed to a future period, and is "beneficial" where the devisee takes solely for his own use or benefit, and not as the mere holder of the title for the use of another. In re Seaman's Estate, 147 N.Y. 69, 41 N.E. 401.

BENEFICIAL INTEREST. Profit, benefit, or advantage resulting from a contract, or the ownership of an estate as distinct from the legal ownership or control. People v. Schaefer, 266 Ill. 334, 107 N.E. 617, 619; Christiansen v. Department of Social Security, 15 Wash.2d 465, 131 P.2d 189, 191, 192.

When considered as designation of character of an estate, is such an interest as a devisee, legatee, or donee takes solely for his own use or benefit, and not as holder of title for use and benefit of another. People v. Northern Trust Co., 330 Ill. 238, 161 N.E. 525, 528.

BENEFICIAL POWER. In New York law and practice. A power which has for its object the donee of the power, and which is to be executed solely for his benefit; as distinguished from a trust power, which has for its object a person other than the donee, and is to be executed solely for the benefit of such person. Jennings v. Conboy, 73 N.Y. 234; In re New York Life Ins. & Trust Co., Sur., 139 N.Y.S. 695, 705; People, by Van Schaick v. New York Title & Mortgage Co., 270 N.Y.S. 473, 150 Misc. 488.

BENEFICIAL USE. The right to use and enjoy property according to one's own liking or so as to derive a profit or benefit from it, including all that makes it desirable or habitable, as light, air, and access; as distinguished from a mere right of occupancy or possession. Reining v. Railroad Co., Super.Ct., 13 N.Y.Supp. 240.

Such right to enjoyment of property where legal title is in one person while right to such use or interest is in another. Christiansen v. Department of Social Security, 15 Wash.2d 465, 131 P.2d 189, 191.

BENEFICIARY. One for whose benefit a trust is created; a *cestui que trust.* 195 N.E. 557, 564, 97 A.L.R. 1170. A person having the enjoyment of property of which a trustee, executor, etc., has the legal possession. The person to whom a policy of insurance is payable. Parrott Estate Co. v. McLaughlin. D.C.Cal., 12 F.Supp. 23, 25; Odom v. Prudential Ins. Co. of America, 173 Or. 435, 145 P.2d 480, 482. One receiving benefit or advantage, or one who is in receipt of benefits, profits, or advantage. Bauer *v.* Myers, C.C.A.Kan., 244 F. 902, 908. For "Favored Beneficiary," see that title.

BENEFICIARY ASSOCIATION. See Beneficial or Benevolent Association.

BENEFICIARY HEIR. In the law of Louisiana. One who has accepted the succession under the benefit of an inventory regularly made. Civ.Code La. art. 883. Also, one who may accept the succession with benefit of inventory. Succession of Galiano, La.App., 195 So. 377, 379.

BENEFICIO PRIMA, or PRIMO [ECCLESIASTICO HABENDO]. In English law. An ancient writ, which was addressed by the king to the lord chancellor, to bestow the benefice that should first fall in the royal gift, above or under a specified value, upon a person named therein. Reg.Orig. 307.

BENEFICIUM.

In Early Feudal Law

A benefice; a permanent stipendiary estate; the same with what was afterwards called a "fief," "feud," or "fee." 3 Steph.Comm. 77, note i; Spelman. It originally meant a "benefaction" from the king, usually to a noble.

In the Civil Law

A benefit or favor; any particular privilege. Dig. 1, 4, 3; Cod. 7, 71; Mackeld.Rom.Law, § 196.

A general term applied to ecclesiastical livings. 4 Bl.Comm. 107; Cowell.

In General

—Beneficium abstinendi. In Roman law. The power of an heir to abstain from accepting the inheritance. Sandars, Just.Inst. (5th Ed.) 214.

—Beneficium cedendarum actionum. In Roman law. The privilege by which a surety could, before paying the creditor, compel him to make over to him the actions which belonged to the stipulator, so as to avail himself of them. Sandars, Just. Inst. (5th Ed.) 332, 351.

—Beneficium clericale. Benefit of clergy *(q. v.).*

—Beneficium competentiw. In Scotch law. The privilege of competency. A privilege which the grantor of a gratuitous obligation was entitled to, by which he might retain sufficient for his subsistence, if, before fulfilling the obligation, he was reduced to indigence. Bell. In the civil law. The right which an insolvent debtor had, among the Romans, on making cession of his property for the benefit of his creditors, to retain what was required for him to live honestly according to his condition. 7 Toullier, n. 258.

A defendant's privilege of being condemned only in an amount which he could pay without being reduced to a state of destitution. Sand. Justinian iv. vi. 37.

—Beneficium divisionis. In civil and Scotch law. The privilege of one of several co-sureties (cautioners) to insist upon paying only his *pro rata* share of the debt. Bell; La.Civ.Code, arts. 3045-3051.

—Beneficium inventarii. See Benefit of Inventory.

—Beneficium ordinis. In civil and Scotch law. The privilege of order. The privilege of a surety to require that the creditor should first proceed against the principal and exhaust his remedy against him, before resorting to the surety. Bell.

—Beneficium separationis. In the civil law. The right to have the goods of an heir separated from those of the testator in favor of creditors.

BENEFICIUM INVITO NON DATUR. A privilege or benefit is not granted against one's will. Adams Gloss.

BENEFICIUM NON DATUM NISI PROPTER FICIUM. Hob. 148. A remuneration [is] not given, unless on account of a duty performed.

BENEFICIUM NON DATUR NISI OFFICII CAUSA. A benefice is not granted except on account or in consideration of duty. Adams Gloss.

BENEFICIUM PRINCIPIS DEBET ESSE MANSURUM. The benefaction of a prince ought to be lasting. Adams Gloss.

BENEFIT. Advantage; profit; fruit; privilege; advantage. Fitch v. Bates, 11 Barb. (N.Y.) 473; Ferrigino v. Keasbey, 93 Conn. 445, 106 A. 445, 447; In re Krause's Estate, 173 Wash. 1, 21 P.2d 268; a pecuniary advantage or profit; gain; account; interest; the whole benefit and entire beneficial interest. Bird v. Newcomb, 170 Va. 208, 196 S.E. 605, 608.

In the Workmen's Compensation Act, the term "benefits" is used of an award to be granted when an injury results in death, and is distinguished from "compensation," which is to be granted when an injury results in incapacity or disability. Di Cicco v. Industrial Commission of Ohio, 11 Ohio App. 271, 273.

In Contracts

When it is said that a valuable consideration for a promise may consist of a benefit to the promisor, "benefit" means that the promisor has, in return for his promise, acquired some legal right to which he would not otherwise have been entitled. Irving v. Irwin, 24 P.2d 215, 216, 133 Cal. App. 374. Woolum v. Sizemore, 267 Ky. 384, 102 S.W.2d 323, 324.

"Benefit" is not limited to pecuniary gains, nor to any particular kind of advantage; it refers to what is advantageous, whatever promotes prosperity or happiness, what enhances the value of the property or rights of citizens as contradistinguished from what is injurious. Hooper v. Merchants' Bank & Trust Co., 130 S.E. 49, 52, 190 N. C. 423.

In Eminent Domain

It is a rule that, in assessing damages for private property taken or injured for public use, "special benefits" may be set off against the amount of damage found, but not "general benefits." Within the meaning of this rule, general benefits are such as accrue to the community at large, to the vicinage, or to all property similarly situated with reference to the work or improvement in question; while special benefits are such as accrue directly and solely to the owner of the land in question and not to others. Brand v. Union Elevated R. Co., 101 N.E. 247, 249, 258 Ill. 133, Ann.Cas.1914B, 473, L.R.A.1918A, 878.

In Taxation

With reference to an assessment for a drainage ditch, a benefit is anything that will make land more valuable for tillage or more desirable for a residence or more valuable in the general market. Watson v. Armstrong, 180 Ind. 49, 102 N.E. 273.

BENEFIT ASSOCIATION. See Benefit Societies.

BENEFIT BUILDING SOCIETY. The original name for what is now more commonly called a "building society" (q. v.).

BENEFIT CERTIFICATE. A written obligation to pay the person therein named the amount specified upon the conditions therein stipulated. Green v. Grand United Order of Odd Fellows, Tex.Civ. App., 163 S.W. 1068, 1070.

Also a term usually applied to policies issued by fraternal and beneficiary societies. Chandler v. New York Life Ins. Co., 194 Ark. 6, 104 S.W.2d 1060, 1061.

BENEFIT OF BARGAIN RULE. Under such rule a defrauded purchaser may recover the difference between the real and the represented value of the property purchased regardless of the fact that the actual loss suffered might have been less. Stewart v. Potter, 44 N.M. 460, 104 P.2d 736, 739.

BENEFIT OF CESSION. In the civil law. The release of a debtor from future imprisonment for his debts, which the law operates in his favor upon the surrender of his property for the benefit of his creditors. Poth.Proc.Civil, pt. 5, c. 2, § 1.

BENEFIT OF CLERGY. In its original sense, the phrase denoted the exemption which was accorded to clergymen from the jurisdiction of the secular courts, or from arrest or attachment on criminal process issuing from those courts in certain particular cases. Afterwards, it meant a privilege of exemption from the punishment of death accorded to such persons as were *clerks,* or who could read. This privilege of exemption from capital punishment was anciently allowed to clergymen only, but afterwards to all who were connected with the church, even to its most subordinate officers, and at a still later time to all persons who could read, (then called "clerks,") whether ecclesiastics or laymen. It does not appear to have been extended to cases of high treason, nor did it apply to mere misdemeanors. The privilege was claimed after the person's conviction, by a species of motion in arrest of judgment, technically called "praying his clergy." As a means of testing his clerical character, he was given a psalm to read, (usually, or always, the fifty-first,) and, upon his reading it correctly, he was turned over to the ecclesiastical courts, to be tried by the bishop or a jury of twelve clerks. These heard him on oath, with his witnesses and compurga-

tors, who attested their belief in his innocence. This privilege operated greatly to mitigate the extreme rigor of the criminal laws, but was found to involve such gross abuses that parliament began to enact that certain crimes should be felonies "without benefit of clergy," and finally, by St. 7 Geo. IV. c. 28, § 6, it was altogether abolished. The act of congress of April 30, 1790, c. 9, § 31, 1 Stat. 119, provided that there should be no benefit of clergy for any capital crime against the United States, and, if this privilege formed a part of the common law of the several states before the Revolution, it no longer exists.

BENEFIT OF COUNSEL. The guaranty of "benefit of counsel" to accused, given in the Georgia Bill of Rights of Const. art. 1, § 1, par. 5, means more than the mere appointment by the court of counsel to represent the accused and implies also that such counsel be given a reasonable time for preparation to properly represent the accused at the trial. Reliford v. State, 140 Ga. 777, 79 S.E. 1128, 1129. Sheppard v. State, 165 Ga. 460, 141 S.E. 196, 198.

BENEFIT OF DISCUSSION. In the civil law. The right which a surety has to cause the property of the principal debtor to be applied in satisfaction of the obligation in the first instance. Civ.Code La. arts. 3045-3051. In Scotch law. That whereby the antecedent heir, such as the heir of line in a pursuit against the heir of tailzie, etc., must be first pursued to fulfill the defunct's deeds and pay his debts. This benefit is likewise competent in many cases to cautioners.

BENEFIT OF DIVISION. Same as *beneficium divisionis (q. v.).*

BENEFIT OF INVENTORY. In the civil law. The privilege which the heir obtains of being liable for the charges and debts of the succession, only to the value of the effects of the succession, by causing an inventory of these effects within the time and manner prescribed by law. Civil Code La. art. 1032.

BENEFIT OF ORDER. See Beneficium Ordinis.

BENEFIT SOCIETIES. Under this and several similar names, in various states, corporations exist to receive periodical payments from members, and hold them as a fund to be loaned or given to members needing pecuniary relief. Such are beneficial societies of Maryland, fund associations of Missouri, loan and fund associations of Massachusetts, mechanics' associations of Michigan, protection societies of New Jersey. Friendly societies in Great Britain are a still more extensive and important species belonging to this class. Comm. v. Equitable Ben. Ass'n, 137 Pa. 412, 18 A. 1112.

BENERTH. A feudal service rendered by the tenant to his lord with plow and cart. Cowell.

BENEVOLENCE. The doing of a kind or helpful action towards another, under no obligation except an ethical one.

The love of humanity; the desire to promote its prosperity or happiness. The term includes acts of well-wishing towards others, for the promotion of general happiness, and plans actuated by love of others and a desire for their well-being. In re Peabody's Estate, 208 N.Y.S. 664, 671, 124 Misc. 338. Also beneficent; doing well.

It is a broader term than "charity" which it includes, and with which it is frequently used synonymously. "Charity" in its legal sense implies giving without consideration or expectation of return, and "benevolence" applies to any act which is prompted by or has for its object the well-being of others. State v. Texas Mut. Life Ins. Co. of Texas, Tex.Civ.App., 51 S.W.2d 405, 410.

In public law. Nominally a voluntary gratuity given by subjects to their king, but in reality a tax or forced loan. Cowell; 1 Bla.Comm. 140.

BENEVOLENT. Philanthropic; humane; having a desire or purpose to do good to men; intended for the conferring of benefits, rather than for gain or profit; loving others and actively desirous of their well being. In re Altman's Estate, 149 N.Y.S. 601, 605, 87 Misc. 255.

This word is certainly more indefinite, and of far wider range, than "charitable" or "religious ;" it would include all gifts prompted by good-will or kind feeling towards the recipient, whether an object of charity or not. The natural and usual meaning of the word would so extend it. It has no legal meaning separate from its usual meaning. "Charitable" has acquired a settled limited meaning in law, which confines it within known limits. But in all the decisions in England on the subject it has been held that a devise or bequest for benevolent objects, or in trust to give to such objects, is too indefinite, and therefore void. Suter v. Hilliard, 132 Mass. 413, 42 Am.Rep. 444;

This word, as applied to objects or purposes, may refer to those which are in their nature charitable, and may also have a broader meaning and include objects and purposes not charitable in the legal sense of that word. Acts of kindness, friendship, forethought, or good-will Might properly be described as benevolent. It has therefore been held that gifts to trustees to be applied for "benevolent purposes" at their discretion, or to such benevolent purposes as they could agree upon, do not create a public charity. But where the word is used in connection with other words explanatory of its meaning, and indicating the intent of the donor to limit it to purposes strictly charitable, it has been held to be synonymous with, or equivalent to, "charitable." Suter v. Hilliard, 132 Mass. 412, 42 Am.Rep. 444;

BENEVOLENT ASSOCIATIONS. Those having a philanthropic or charitable purpose, as distinguished from such as are conducted for profit; specifically, "benefit associations" or "beneficial associations." Methodist Episcopal Church Baraca Club v. City of Madison, 167 Wis. 207, 167 N. W. 258, L.R.A.1918D, 1124.

BENEVOLENT CORPORATION. One that ministers to all; the purpose may be anything that promotes the mental, physical, or spiritual welfare of man. Society of Helpers of Holy Souls v. Law, 267 Mo. 667, 186 S.W. 718, 725; with respect to exemption from succession tax. Corbin v. American Industrial Bank & Trust Co., 95 Conn. 50, 110 A. 459, 461. The term may include a corporation to which a bequest is made to be used in the improvement of the social, physical, and economic condition of the employees of a business corporation. In re Altman's Estate, 149 N.Y.S. 601, 605, 87 Misc. 255.

BENEVOLENT SOCIETY. Benevolent association. Spring Park Ass'n v. Rosedale Park Amusement Co., 216 Ala. 549, 114 So. 43, 44. In English. law, "benevolent societies" are societies established and registered under the Friendly Societies Act, 1875, for any charitable or benevolent purposes.

BENEVOLENTIA REGIS HABENDA. The form in ancient fines and submissions to purchase the king's pardon and favor in order to be restored to place, title or estate. Paroch.Antiq. 172.

BENHURST. In Berkshire, a remedy for the inhabitants thereof to levy money recovered against them on the statute of hue and cry. 39 Eliz. c. 25.

BENIGNE FACIENDIE SUNT INTERPRETATIONES CHARTARUM, UT RES MAGIS VALEAT QUAM PEREAT; ET QUE LIBET CONCESSIO FORTISSIME CONTRA DONATOREM INTERPRETANDA EST. Liberal interpretations are to be made of deeds, so that the purpose may rather stand than fall; and every grant is to be taken most strongly against the grantor. Hayes v. Kershow, 1 Sandf.Ch. (N.Y.) 258, 268.

BENIGNE FACIENDIE SUNT INTERPRETATIONES, PROPTER SIMPLICITATEM LAICORUM, UT RES MAGIS VALEAT QUAM PEREAT; ET VERBA INTENTION!, NON E CONTRA, DEBENT INSERVIRE. Constructions [of written instruments] are to be made liberally, on account of the simplicity of the laity, [or common people,] in order that the thing [or subject-matter] may rather have effect than perish, [or become void] ; and words must be subject to the intention, not the intention to the words. 2 Bla.Com. 379; 1 Bulstr. 175; Krider v. Lafferty, 1 Whart. (Pa.) an.

BENIGNIOR SENTENTIA IN VERBIS GENERALIBUS SEU DUBIIS, EST PRIEFERENDA. The more favorable construction is to be placed on general or doubtful expressions. 2 Kent 557.

BENIGNIUS LEGES INTERPRETAND,E SUNT QUO VOLUNTAS EARUM CONSERVETUR. Laws are to be more liberally interpreted, in order that their intent may be preserved. Dig. 1, 3, 18.

BENZINE. A crude petroleum distillate. George K. Hale Mfg. Co. v. Hafleigh & Co., C.C.A.Pa., 52 F.2d 714, 718.

BEQUEATH. To give personal property by will to another. Fielding v. Alkire, 124 Kan. 592, 261 P. 597, 599. It therefore is distinguishable from "devise," which is properly used of realty. Stubbs v. Abel, 114 Or. 610, 233 P. 852, 857; Fleck v. Harmstad, 155 A. 875, 876, 304 Pa. 302, 77 A.L.R. 874.

But if the context clearly shows the intention of the testator to use the word "bequeath" as synonymous with "devise." it may be held to pass real property. Stubbs v. Abel, 114 Or. 610, 233 P. 852, 859.

BEQUEST. A gift by will of personal property; a legacy. In re Fratt's Estate, 60 Mont. 526, 199 P. 711, 714; In re Wood's Estate, 6 N.W.2d 846, 848, 232 Iowa 1004; Disposition of realty in will is termed "devise." Grand Island Trust Co. v. Snell, 249 N.W. 293, 125 Neb. 148.

The term does not mean a "gift" in the narrow sense of a voluntary act of charity or good will, but ordinarily means a testamentary disposition of the testator's personalty. First Presbyterian Church of Mt. Vernon v. Dennis, 178 Iowa, 1352, 161 N.W. 183, 185, L.R.A.1917C, 1005. It is not necessarily limited to a gratuity, and may include a recompense. U. S. v. Merriam, 44 S.Ct. 69, 70, 263 U.S. 179, 68 L. Ed. 240, 29 A.L.R. 1547.

"Bequest" and "devise" are often used synonymously. In re McGovern's Estate, 77 Mont. 182, 250 P. 812, 817.

Conditional Bequest

One the taking effect or continuing of which depends upon the happening or non-occurrence of a particular event. Merrill v. College, 74 Wis. 415, 43 N.W. 104.

Executory Bequest

The bequest of a future, deferred, or contingent interest in personalty.

Residuary Bequest

A gift of all the remainder of the testator's personal estate, after payment of debts and legacies, etc.

Specific Bequest

One whereby the testator gives to the legatee all his property of a certain class or kind; as all his pure personalty.

BERAT. Also *barat*. A warrant or patent of dignity or privilege given by an Oriental monarch. Cent. Dict.

BERBIAGE. A rent paid for the pasturing of sheep. Wharton.

BERCARIA. In old English law, a sheepfold; also a place where the bark of trees was laid to tan.

BERCARIUS, or BERCATOR. A shepherd.

BEREWICHA, or BEREWICA. In old English law. A term used in Domesday for a village or hamlet belonging to some town or manor.

BERG. A rock (Cent. Dict.) ; a hill (Wharton) ; in South Africa, a mountain (Webster).

BERGHMAYSTER. An officer having charge of a mine. A bailiff or chief officer among the Derbyshire miners, who, in addition to his other duties, executes the office of coroner among them. Blount; Cowell.

BERGHMOTH, or BERGHMOTE. The ancient name of the court now called "barmote," (q. v.).

BERIA, BERIE, or BERRY. A plain; a large open field. Wharton. See Berra.

BERM BANK. A ledge at the bottom of a cutting or bank, as of a creek, to catch earth that may roll down the slope, or to strengthen the bank. Miller v. State, 149 N.Y.S. 788, 789, 164 App.Div. 522.

BERNET. In Saxon law. Burning; the crime of house burning, now called "arson." Cowell; Blount.

BERRA. In old law. A plain; open heath. Cowell.

BERRY, or BURY. A villa or seat of habitation of a nobleman; a dwelling or mansion house; a sanctuary.

BERTILLON SYSTEM. A method of anthropometry *(q. v.),* used chiefly for the identification of criminals and other persons, consisting of the taking and recording of a system of numerous, minute, and uniform measurements of various parts of the human body, absolutely and in relation to each other, the facial, cranial, and other angles, and of any eccentricities or abnormalities noticed in the individual.

BERTON. A large farm; the barn-yard of a large farm.

BES. Lat. In the Roman law. A division of the *as,* or pound, consisting of eight *uncice,* or duodecimal parts, and amounting to two-thirds of the *as.* 2 Bl.Comm. 462 note m.

Two-thirds of an inheritance. Inst. 2, 14, 5.

Eight per cent. interest. 2 Bl.Comm. ubi supra.

BESAILE, BESAYLE. The great-grandfather, *proavus.* 1 Bl.Comm. 186.

BESAYEL, Besaiel, Besayle. In old English law. A writ which lay where a great-grandfather died seised of lands and tenements in fee-simple, and on the day of his death a stranger abated, or entered and kept out the heir. Reg.Orig. 226; Fitzh. Nat.Brev. 221 D; 3 Bl.Comm. 186.

BESIDES. In addition to; moreover; also; likewise. State v. State Road Commission, 100 W.Va. 531, 131 S.E. 7, 10.

In provisions in a will for children "besides" an eldest son, no children take unless there be a son. 4 Dr. & War. 235.

BESEECH. To entreat; to emplore. Tiencken v. Zerbst, 196 S.C. 438, 13 S.E.2d 483, 484.

BESOIN. Fr. Need. See Au Besoin.

BESOT. To stupefy, to make dull or senseless, to make to dote; and "to dote" is to be delirious, silly, or insane. Gates v. Meredith, 7 Ind. 440, 441.

BESS. A well-known contraction of "Elizabeth." H. R. & C. Co. v. Smith, 208 N.Y.S. 396, 400, 212 App.Div. 173.

BESSEMERIZING. A process by which copper relatively pure is obtained from matte. Peirce-Smith Converter Co. v. United Verde Copper Co., D.C.Del., 293 F. 108, 109.

BEST. Of the highest quality; of the greatest usefulness for the purpose intended. For example:

The "best bid" of interest by a prospective depositary of school funds would not necessarily be the highest bid, but, looking to the solvency of the bidder, the bond tendered, and all the circumstances surrounding the transaction, the safety and preservation of the school fund, the "best bid" might be the lowest bid. Donna Independent School Dist. v. First State Bank of Donna, Tex.Civ.App., 227 S.W. 974, 975.

Where one covenants to use his "best endeavors," there is no breach if he is prevented by causes wholly beyond his control and without any default on his part. 7 H. & N. 92.

The "best interests" of a child whose custody is in question has reference more particularly to the moral welfare than to mere comforts, benefits, or advantages that wealth can give. Jones v. Moore, 61 Utah, 383, 213 P. 191, 194. The "best interests" of an estate mean the greatest or most advantage or usefulness to such estate. Stockyards Nat. Bank of South Omaha v. Bragg, 67 Utah, 60, 245 P. 966, 971.

BEST EVIDENCE. Primary evidence, as distinguished from secondary; original, as distinguished from substitutionary; the best and highest evidence of which the nature of the case is susceptible, not the highest or strongest evidence which the nature of the thing to be proved admits of. See, also, Primary Evidence.

A written instrument is itself always regarded as the primary or best possible evidence of its existence and contents; a copy, or the recollection of a witness, would be secondary evidence. Manhattan Malting Co. v. Sweteland, 14 Mont. 269, 36 P. 84.

"Best evidence" or "primary evidence" includes the best evidence which is available to a party and procurable under the existing situation, and all evidence falling short of such standard, and which in its nature suggests there is bettei evidence of the same fact, is "secondary evidence." Best v. Equitable Life Assur. Soc., Mo.App., 299 S.W. 118, 120.

The best evidence of a fact is the testimony of a person who knows. State v. Normandale, 154 La. 523, 97 So. 798, 799 (mother could testify to the date of her daughter's birth, as against an objection that the baptismal certificate or the registry was the best evidence).

"Best evidence rule". Is that highest available degree of proof must be produced. Cheadle v. Bardwell, 95 Mont. 299, 26 P.2d 336. It means that no evidence which is merely substitutionary in its nature shall be received so long as original evidence can be had; Pettit v. Campbell, Tex.Civ. App., 149 S.W.2d 633, 635, 636; that contents of document must be proved by producing document itself. Nunan v. Timberlake, 85 F.2d 407, 410, 66 App.D.C. 150.

BESTIR, A beast, as a being without reason; —opposed to man; while animal, a living being, includes man also. Adams Gloss., citing Just. Inst., 2, 1, 12.

BESTIAE CARUCAE. Beasts of the plow. Adams Gloss., citing Fleta, IV, c. 17, § 14.

BESTIALITY. A sexual connection between a human being and a brute of the opposite sex. State v. Poole, 122 P.2d 415, 416, 59 Ariz. 44.

At common law the term "crime against nature" embraced both "sodomy" and "bestiality", State v. Poole, 122 P.2d 415, 416, 59 Ariz. 44. See Sodomy.

BESTOW. To give, grant, confer, or impart; not necessarily limited in meaning to "devise." Tillett v. Nixon, 180 N.C. 195, 104 S.E. 352, 355.

BET. An agreement between two or more persons that a sum of money or other valuable thing, to which all jointly contribute, shall become the sole property of one or some of them on the happening in the future of an event at present un-

certain, or according as a question disputed between them is settled in one way or the other. Coulter v. State, 122 Tex.Cr.R. 9, 53 S.W.2d 477, 480.

A contract by which two or more parties agree that a sum of money, or other thing, shall be paid or delivered to one of them on the happening or not happening of an uncertain event. Grooms v. Knox, 25 Ala.App. 185, 142 So. 582.

In a "bet" or "wager" money belongs to the persons posting it, each of whom has a chance to win it, but, in the case of a "purse" or "premium," money belongs to the person offering it, who has no chance to win it, but is certain to lose it. Toomey v. Penwell, 76 Mont. 166, 245 P. 943, 945, 45 A.L.R. 993.

Bet and wager are synonymous terms. Woodcock v. McQueen, 11 Ind. 16; Shumate v. Com., 15 Grat. (Va.) 660.

BETHLEHEM. See Bedlam.

BETTING BOOK. A book kept for registering bets on the result of a race as operated on race track. In a broader sense, the "betting book" is that book which enables the professional bettor to carry on his business, and to promote a race, and it includes the book, the making book and the bookmaker. State v. Austin, 142 La. 384, 76 So. 809, 810; People v. Semmler, 345 Ill. 272, 178 N.E. 100, 101.

BETRAYAL. A "betrayal," as of a professional secret on the part of a physician, signifies a wrongful disclosure in violation of the trust imposed by the patient. Simonsen v. Swenson, 104 Neb. 224, 177 N.W. 831, 832, 9 A.L.R. 1250.

BETROTHED. One who has exchanged promises to marry. The term may be synonymous with "intended wife." Mace v. Grand Lodge, A. 0. U. W. of Massachusetts, 234 Mass. 299, 125 N.E. 569.

BETROTHMENT, BETROTHAL. Mutual promise of marriage; the plighting of troth; a mutual promise or contract between a man and woman competent to make it, to marry at a future time.

BETTER DESCRIBED. More fully delineated or more fully pictured or painted. Katzin v. Kruvant, 99 N.J.Eq. 619, 133 A. 516, 517.

BETTER EQUITY. See Equity.

BETTERMENT. An improvement put upon an estate which enhances its value more than mere repairs. The improvement may be either temporary or permanent. People v. Klee, 282 Ill. 440, 118 N.E. 754, 757.

Also applied to denote the additional value which an estate acquires in consequence of some public improvement, as laying out or widening a street, etc., Chase v. Sioux City, 86 Iowa, 603, 53 N.W. 333.

BETTERMENT ACTS. Statutes which provide that a bona fide occupant of real estate making lasting improvements in good faith shall have a lien upon the estate recovered by the real owner to the extent that his improvements have increased the value of the land. Also called "occupying claimant acts." Jones v. Hotel Co., 86 F. 386, 30 C.C.A. 108.

BETWEEN. A space which separates. Hobson v. Postal Telegraph-Cable Co., 161 Tenn. 419, 32 S. W.2d 1046. Strictly applicable • only with reference to two things, but this may be understood as including cases in which a number of things are discriminated collectively as two wholes, or as taken in pairs, or where one thing is set off against a number of others. In re McShane's Will, 286 N.Y.S. 680, 682, 158 Misc. 777. Sometimes used synonymously with "among". In re Moore's Estate, 157 Pa.Super. 296, 43 A.2d 359.

As a measure or indication of distance, this word has the effect of excluding the two termini. Morris & E. R. Co. v. Central R. Co., 31 N.J.Law, 212.

If an act is to be done "between" two certain days, it must be performed before the commencement of the latter day. In computing the time in such a case, both the days named are to be excluded. Hodges v. Filstrup, 94 Fla. 943, 114 So. 521, 522. But a clause in a contract of sale to the effect that the purchaser could require the vendor to repurchase between the fifth and sixth year from a certain date means during the sixth year. Van Demark v. California Home Extension Ass'n, 43 Cal.App. 685, 185 P. 866, 868.

In case of a devise to A. and B. "between them," these words create a tenancy in common. Lashbrook v. Cock, 2 Mer. 70.

Between equal equities the law must prevail. This is hardly of general application.

BEVERAGE. A liquor or liquid for drinking. Burnstein v. U. S., C.C.A.Cal., 55 F.2d 599, 603. Especially pleasant or refreshing drink, or a habitual one. Tennant v. F. C. Whitney & Sons, 133 Wash. 581, 234 P. 666, 670.

This term is properly used to distinguish a sale of liquors to be drunk for the pleasure of drinking, from liquors to be drunk in obedience to a physician's advice, Falstaff Corporation v. Allen, D.C.Mo., 278 F. 643, 645; or from a liquid which it is possible to swallow, but which is not reasonably palatable or fit for drinking, Tennant v. F. C. Whitney & Sons, 133 Wash. 581, 234 P. 666. Thus, it is held that pure alcohol is not a "beverage" but a violent irritant. Chas. L. Joy & Co. v. Carlson, 28 Idaho 445, 154 P. 640, 641.

This term sometimes has a narrower meaning signifying a drink artificially prepared. Climax Dairy Co. v. Mulder, 78 Colo. 407, 242 P. 666, 669. United States v. Robason, D.C.Kan., 38 F.Supp. 991, 992.

BEWARED. 0. Eng. Expended. Before the Britons and Saxons had introduced the general use of money, they traded chiefly by exchange of wares. Wharton.

BEYOND A REASONABLE DOUBT. In evidence means fully satisfied, entirely convinced, satisfied to a moral certainty; State v. Harris, 28 S.E.2d 232, 237, 223 N.C. 697; and phrase is the equivalent of the words clear, precise and indubitable. Ferguson Packing Co. v. Mihalic, 99 Pa.Super. 158, 162.

An accused's guilt must be established "beyond a reasonable doubt," which means that facts proven must, by virtue of their probative force, establish guilt. People ex rel. Schubert v. Pinder, 9 N.Y.S.2d 311, 312, 170 Misc. 345.

BEYOND SEA. Beyond the limits of the kingdom of Great Britain and Ireland; outside the United States; out of the state.

Beyond sea, beyond the four seas, beyond the seas, and out of the realm, are synonymous. Prior to the union of the two crowns of England and Scotland, on the accession of James I., the phrases "beyond the four seas," "beyond the seas," and "out of the realm," signified out of the

limits of the realm of England. Pancoast's Lessee v. Addison, 1 Han & J. (Md.) 350, 2 Am.Dec. 520.

In Pennsylvania, it has been construed to mean "without the limits of the United States," which approaches the literal signification. Ward v. Hallam, 2 Da11. 217, 1 L.1 d. 355. The same construction has been given to it in Missouri. Keeton's Heirs v. Keeton's Adm'r, 20 'Mo. 530. See Ang.Lim. §§ 200, 201.

BIAS. Inclination; bent; prepossession; a preconceived opinion; a predisposition to decide a cause or an issue in a certain way, which does not leave the mind perfectly open to conviction. Maddox v. State, 32 Ga. 587, 79 Am.Dec. 307; Pierson v. State, 18 Tex.App. 558. To incline to one side. Yarbrough v. Mallory, 225 Ala. 579, 144 So. 447, 448. Condition of mind, which sways judgment and renders judge unable to exercise his functions impartially in particular case. Evans v. Superior Court in and for Los Angeles County, 107 Cal.App. 372, 290 P. 662, 665.

As used in law regarding disqualification of judge, refers to mental attitude or disposition of the judge toward a party to the litigation, and not to any views that he may entertain regarding the subject matter involved. State ex rel. Mitchell v. Sage Stores Co., 157 Kan. 622, 143 P.2d 652, 655.

*Actual bias* consists in the existence of a state of mind on the part of the juror which satisfies the court, in the exercise of a sound discretion, that the juror cannot try the issues impartially and without prejudice to the substantial rights of the party challenging. People v. Wells, 100 Cal. 227, 34 P. 718.

BIBLE. See Family Bible.

BICAMERAL SYSTEM. A term applied by Jeremy Bentham to the division of a legislative body into two chambers, as in the United States government.

BID. An offer by an intending purchaser to pay a designated price for property which is about to be sold at auction. U. S. v. Vestal, D.C.N.C., 12 F. 59. Payne v. Cave, 3 Term, 149; Eppes v. Railroad Co., 35 Ala. 56. See Chilling a sale.

An offer to perform a contract for work and labor or supplying materials at a specified price.

Similarly, an offer to do any of various other acts, as the payment by a bank of a particular rate of interest for the privilege of becoming a depositary of county funds. Casey v. Independence County, 109 Ark. 11, 159 S.W. 24, 25, Ann. Cas.1915C, 1008. A "bid" for bonds is no more nor less than a proposition. Joint School Dist. No. 132 in Major County and Alfalfa County v. Dabney, 127 Oki. 234, 260 P. 486, 491.

—Bid in. Property sold at auction is said to be "bid in" by the owner or an incumbrancer or some one else who is interested in it, when he attends the sale and makes the successful bid.

—Bid off. One is said to "bid off" a thing when he bids for it at an auction sale, and it is knocked down to him in immediate succession to the bid and as a consequence of it. Eppes v. Railroad Co., 35 Ala. 56; Doudna, v. Harlan, 45 Kan. 484, 25 Pac. 883.

—Bidder. One who makes a bid. One who offers to pay a specified price for an article offered for sale at a public auction. Webster v. French, 11 Ill. 254. As to "Responsible bidder" see that title.

—Biddings. Offers of a designated price for goods or other property put up for sale at auction.

—By-bidding. In the law relating to sales by auction, this term is equivalent to "puffing." The practice consists in making fictitious bids for the property, under a secret arrangement with the owner or auctioneer, for the purpose of misleading and stimulating other persons who are bidding in good faith.

—Competitive bidding. "Competitive bidding" means that the council must by due advertisement give opportunity for everyone to bid, but does not mean that more than one bid must be submitted. Blanton v. Town of Wallins, 218 Ky. 295, 291 S.W. 372, 375. The term means bidding upon the same undertaking, upon the same material items in the subject-matter, upon the same thing. Leininger v. Ward, 126 Okl. 114, 258 P. 863, 864.

—Upset bid. A bid made after a judicial sale, but before the successful bid at the sale has been confirmed, larger or better than such successful bid, and made for the purpose of upsetting the sale and securing to the "upset bidder" the privilege of taking the property at his bid or competing at a new sale. Yost v. Porter, 80 Va. 858.

BIDAL, or BIDALL. An invitation of friends to drink ale at the house of some poor man, who hopes thereby to be relieved by charitable contribution. It is something like "house-warming," i. *e.,* a visit of friends to a person beginning to set up housekeeping. Wharton. See Bed-Ale.

"There was an antient Custom called a *Bid-Ale* * * * when any honest Man decayed in his Estate, was set up again by the liberal Benevolence and Contributions of Friends at a Feast, to which those Friends were bid or invited. It was most used in the West of England, and in some Counties called a Help Ale." Brand's Pop. Antiq. (1777), p. 339, *note.*

BIELBRIEF. Germ. In European maritime law. A document furnished by the builder of a vessel, containing a register of her admeasurement, particularizing the length, breadth, and dimensions of every part of the ship.

It sometimes also contains the terms of akreement between the party for whose account the ship is built, and the ship-builder. It has been termed in English the "grand bill of sale ;" in French, *"contrat de construction ou de la vente d'un vaisseau,"* and corresponds in a great degree with the English, French, and American "register," *(q. v.,)* being an equally essential document to the lawful ownership of vessels. Jac. Sea Laws, 12, 13, and note. In the Danish law, it *is* used to denote the contract of bottomry.

BIENES. Sp. In Spanish law. Goods; property of every description, including real as well as personal property; all things (not being persons) which may serve for the uses of man. Larkin v. U. S., 14 Fed.Cas. 1154.

—Bienes comunes. Common property; those things which, not being the private property of any person, are open to the use of all, such as the air, rain, water, the sea and its beaches. Lux v. Haggin, 69 Cal. 255, 315, 10 Pac. 707.

—Bienes ganariciales. A species of community in property enjoyed by husband and wife, the property being divisible equally between them on the dissolution of the marriage; does not include what they held as their separate property at the time of contracting the marriage. Welder v. Lambert, 91 Tex. 510, 44 S.W. 281.

—Bienes publieos. Those things which, as to property, pertain to the people or nation, and, as to their use, to the individuals of the territory or district, such as rivers, shores, ports, and public roads. Lux v. Haggin, 69 Cal. 315, 10 P. 707.

BIENNIALLY. This term, in a statute, signifies, not duration of time, but a period for the happening of an event; once in every two years. People v. Tremain, 9 Hun (N.Y.) 576; People v. Kilbourn, 68 N.Y. 479.

BIENS. In English law. Property of every description, except estates of freeho\d and inheritance. Sugd.Vend. 495; Co.Litt. 119b.

In French law. This term includes all kinds *of* property, real and personal. *Biens* are divided into *biens meubles,* movable property; and *biens immeubles,* immovable property. The distinction between movable and immovable property is recognized by the continental jurists, and gives rise, in the civil as well as in the common law, to many important distinctions as to rights and remedies. Story, Confl.Laws, § 13, note 1. Castle v. Castle, C.C.A.Hawaii, 267 F. 521, 523.

BIGA, or BIGATA. A cart or chariot drawn with two horses, coupled side to side; but it is said to be properly a cart with two wheels, sometimes drawn by one horse; and in the ancient records it is used for any cart, wain, or wagon. Jacob.

BIGAMUS. In the civil law. A man who was twice married; one who at different times and successively has married two wives. 4 Inst. 88. One who has two wives living. One who marries a widow.

Used in ecclesiastical matters as a reason for denying benefit of the clergy. *Termes de la Ley.*

BIGAMUS SEU TRIGAMUS, ETC., EST QUI DIVERSIS TEMPORIBUS ET SUCCESSIV1 DUAS SEU TRES UXORES HABUIT. 4 Inst. 88. A bigamus or trigamus, etc., is one who at different times and successively has married two or three wives.

BIGAMY. The criminal offense of willfully and knowingly contracting a second marriage (or going through the form of a second marriage) while the first marriage, to the knowledge of the offender, is still subsisting and undissolved. Scoggins v. State, 32 Ark. 213; People v. Manfredonio, 191 N.Y.S. 748, 117 Misc. 632, 39 N.Y.Cr.R. 41.

The state of a man who has two wives, or of a woman who has two husbands, living at the same time. State v. Lindsey, 26 N.M. 526, 194 P. 877. Farewell v. Commonwealth, 189 S.E. 321, 323, 167 Va. 475.

The offense of having a plurality of wives at the same time is commonly denominated "polygamy;" but the name "bigamy" has been more frequently given to it in legal proceedings. 1 Russ.Crimes, 185.

The use of the word "bigamy" to describe this offense is well established by long usage, although often criticized as a corruption of the true meaning of the word. Polygamy is suggested as the correct term, instead of bigamy, to designate the offense of having a plurality of wives or husbands at the same time, and has been adopted for that purpose in the Massachusetts statutes. But as the substance of the offense is marrying a second time, while having a lawful husband or wife living, without regard to the number of marriages that may have taken place, bigamy seems not an inappropriate term. The objection to Its use urged by Blackstone (4 Bl.Comm. 163) seems to be founded not so much upon considerations of the etymology of the word as upon the propriety of distinguishing the ecclesiastical offense termed "bigamy" in the canon law, and which is defined below, from the offense known as "bigamy" in the modern criminal law. The same distinction is carefully made by Lord Coke, (4 Inst. 88.) But, the ecclesiastical offense being now obsolete, this reason for substituting polygamy to denote the crime here defined ceases to have weight. Abbott.

In the canon law, the term denoted the offense committed by an ecclesiastic who married two wives successively. It might be committed either by marrying a second wife after the death of a first or by marrying a widow.

BIGOT. An obstinate person, or one that is wedded to an opinion, in matters of religion, etc.

BILAGINES. By-laws of towns; municipal laws.

BILAN. A term used in Louisiana, derived from the French. A book in which bankers, merchants, and traders write a statement of all they owe and all that is due them; a balance-sheet. See Dauphin v. Soulie, 3 Mart. (N.S.) 446.

BILANCIIS DEFERENDIS. In English law. An obsolete writ addressed to a corporation for the carrying of weights to such a haven, there to weigh the wool anciently licensed for transportation. Reg.Orig. 270.

BILATERAL CONTRACT. A term, used originally in the civil law, but now generally adopted, denoting a contract in which both the contracting parties are bound to fulfill obligations reciprocally towards each other; as a contract of sale, where one becomes bound to deliver the thing sold, and the other to pay the price of it. Montpelier Seminary v. Smith, 69 Vt. 382, 38 A. 66. A contract executory on both sides, National Surety Co. v. City of Atlanta, 102 S.E. 175, 176, 24 Ga.App. 732, and one which includes both rights and duties on each side, Crane Ice Cream Co. v. Terminal Freezing & Heating Co., 147 Md. 588, 128 A. 280, 282, 39 A.L.R. 1184. One containing mutual promises between parties; each party being both promisor and promisee. Aden v. Dalton, 341 Mo. 454, 107 S.W.2d 1070, 1073.

"Every convention properly so called consists of a promise or mutual promises proffered and accepted. Where one only of the agreeing parties gives a promise, the convention is said to be 'unilateral.' Wherever mutual promises are proffered and accepted, there are, in strictness, two or more conventions. But where the performance of either of the promises is made to depend on the performance of the other, the several conventions are commonly deemed

one convention and the convention is then said to be 'bilateral.' " Aust.Jur. § 308.

See, also, Contract.

BILBOES. A device used for punishment at sea, similar to the stocks *(q.* v.) on land.

BILGED. In admiralty law and marine insurance. That state or condition of a vessel in which water is freely admitted through holes and breaches made in the planks of the bottom, occasioned by injuries, whether the ship's timbers are broken or not. Peele v. Insurance Co., 3 Mason, 27, 39, 19 Fed.Cas. 103.

BILINE. A word used by Britton in the sense of "collateral." *En line biline,* in the collateral line. Britt, c. 119.

BILINGUIS. Of a double language or tongue; that can speak two languages. A term applied in the old books to a jury composed partly of Englishmen and partly of foreigners, which, by the English law, an alien party to a suit is, in certain cases, entitled to; more commonly called a "jury *de medietate linguce."* 3 Bl.Comm. 360; 4 Steph. Comm. 422.

BILL. A formal declaration, complaint, or statement of particular things in writing.

As a legal term, this word has many meanings and applications, the more important of which are enumerated below.

1. A formal written statement of complaint to a court of justice

In the ancient practice of the court of king's bench, the usual and orderly method of beginning an action was by a *bill,* or original bill, or plaint. This was a written statement of the plaintiff's cause of action, like a declaration or complaint, and always alleged a trespass as the ground of it, in order to give the court jurisdiction. 3 Bl.Comm. 43.

In Scotch law, every summary application in writing, by way of petition to the Court of Session, is called a "bill." Cent. Dict.

—Bill chamber. In Scotch law. A department of the court of session in which petitions for suspension, interdict, etc., are entertained. It is equivalent to sittings in chambers in the English and American practice. Paters. Comp.

—Bill of privilege. In old English law. A method of proceeding against attorneys and officers of the court not liable to arrest. 3 Bl.Comm. 289.

—Bill of proof. In English practice. The name given, in the mayor's court of London, to a species of intervention by a third person laying claim to the subject-matter in dispute between the parties to a suit.

2. A species of writ

A formal written declaration by a court to its officers, in the nature of process.

—Bill of Middlesex. An old form of process similar to a *capias,* issued out of the court of king's bench in personal actions, directed to the sheriff of the county of Middlesex, (hence 'the name,) and commanding him to take the defendant and have him before the king at Westminster on a day named, to answer the plaintiff's complaint.

3. A formal written petition

To a superior court for action to be taken in a cause already determined, or a record or certified account of the proceedings in such action or some portion thereof, accompanying such a petition.

—Bill of advocation. In Scotch practice. A bill by which the judgment of an inferior court is appealed from, or brought under review of a superior. Bell.

—Bill of certiorari. A bill: the object of which is to remove a suit in equity from some inferior court to the court of chancery, or some other superior court of equity, on account of some alleged incompetency of the inferior court, or some injustice in its proceedings. Story, Eq.P1. (5th Ed.) § 298.

—Bill of evidence. Stenographer's transcript of testimony heard at trial and may be considered on appeal as bill of exceptions. Spencer v. Commonwealth, 250 Ky. 370, 63 S.W.2d 288.

—Bill of exceptions. A formal statement in writing of the objections or exceptions taken by a party during the trial of a cause to the decisions, rulings, or instructions of the trial judge, stating the objection, with the facts and circumstances on which it is founded, and, in order to attest its accuracy, signed and sealed by the judge; the object being to put the controverted rulings or decisions upon the record for the information of the appellate court. Buessel v. U. S., C.C.A.Conn., 258 Fla. 811, 815.

It is designed to preserve and make a part of the record proceedings not otherwise of record. Yott v. Yott, 100 N. E. 902, 903, 257 Iii. 419; It is only that part of the proceedings not embraced in the judgment roll. When the ends of justice require it, the terms "bill of exceptions" and "statement of case" are regarded as synonymous; Shawnee Commercial College v. Aydelotte, 38 P.2d 579, 581, 170 Okl. 15.

"Bill of exceptions" and "transcripts of evidence," however, are clearly distinguishable. The latter may contain no objection or exception, and nothing other than the evidence introduced on the trial; the former is, strictly speaking, only a record which points out alleged errors committed below in relation to evidence as well as other things. Broadway & Newport Bridge Co. v. Commonwealth, 173 Ky. 165, 190 S.W. 715, 719.

4. In equity practice

A formal written complaint, in the nature of a petition, addressed by a suitor in chancery to the chancellor or to a court of equity or a court having equitable jurisdiction, showing the names of the parties, stating the facts which make up th.' case and the complainant's allegations, averring that the acts disclosed are contrary to equity, and paying for process and for specific relief, or for such

relief as the circumstances demand. Sharon v. Sharon, 67 Cal. 185, 7 P. 456.

—Bill for a new trial. A bill in equity in which the specific relief asked is an injunction against the execution of a judgment rendered at law, and a new trial in the action, on account of some fact which would render it inequitable to enforce the judgment, but which was not available to the party on the trial at law, or which he was prevented from presenting by fraud or accident, without concurrent fraud or negligence on his own part.

—Bill for foreclosure. One which is filed by a mortgagee against the mortgagor, for the purpose of having the estate sold, thereby to obtain the sum mortgaged on the premises, with interest and costs. 1 Madd.Ch.Pr. 528.

—Bill for fraud. The object and effect of it, even if the fraud consists of want of notice, are to vacate the former decree, not to retry the case. Caldwell v. Huffstutter, 173 Tenn. 225, 116 S.W.2d 1017, 1019.

—Bill in aid of execution. A bill to set aside encumbrances or conveyances therein specified as fraudulent. Pape v. Pareti, 42 N.E.2d 361, 364, 315 Ill.App. 1 ; Dean v. Torrence, 299 N.W. 793, 796, 299 Mich. 24.

—Bill in nature of a bill of review. A bill in equity, to obtain a re-examination and reversal of a decree, filed by one who was not a party to the original suit, nor bound by the decree.

—Bill in nature of a bill of revivor. Where, on the abatement of a suit, there is such a transmission of the interest of the incapacitated party that the title to it, as well as the person entitled, may be the subject of litigation in a court of chancery, the suit cannot be continued by a mere bill of revivor, but an original bill upon which the title may be litigated must be filed. This is called a "bill in the nature of a bill of revivor." It is founded on privity of estate or title by the act of the party. And the nature and operation of the whole act by which the privity is created is open to controversy. Story, Eq.P1. §§ 378-380; 2 Amer. & Eng.Enc.Law, 271.

—Bill in nature of a supplemental bill. A bill filed when new parties, with new interests, arising from events happening since the suit was commenced, are brought before the court; wherein it differs from a supplemental bill, which is properly applicable to those cases only where the same parties or the same interests remain before the court. Story, Eq.P1. (5th Ed.) § 345 et seq.

—Bill in nature of interpleader. See Bill of Interpleader.

—Bill of conformity. One filed by an executor or administrator, who finds the affairs of the deceased so much involved that he cannot safely administer the estate except under the direction of a court of chancery. This bill is filed against the creditors, generally, for the purpose of having all their claims adjusted, and procuring a final decree settling the order of payment of the *assets.* 1 Story, Eq.Jur. § 440.

—Bill of discovery. A proceeding by a party against an adversary for discovery of facts within adversary's knowledge, or discovery of documents, writings, or other things within his possession or power, to be used either offensively or defensively in a pending or contemplated action. Dallas Joint Stock Land Bank v. Rawlins, Tex.Civ.App., 129 S. W.2d 485, 486; First Nat. Bank v. Dade-Broward Co., 171 So. 510, 125 Fla. 594.

In aid of action at law is equitable remedy to enable litigant to obtain, prior to trial, such information as is in exclusive possession of adverse party and is necessary to establishment of complainant's case. Yorkshire Worsted Mills v. National Transit Co., 325 Pa. 427, 190 A. 897, 898.

—Bill of information. Where a suit is instituted on behalf of the crown or government, or of those of whom it has the custody by virtue of its prerogative, or whose rights are under its particular protection, the matter of complaint is offered to the court by way of information by the attorney or solicitor general, instead of by petition. Where a suit immediately concerns the crown or government alone, the proceeding is purely by way of information, but, where it does not do so immediately, a relator is appointed, who is answerable for costs, etc., and, if he is interested in the matter in connection with the crown or government, the proceeding is by information and bill. Informations differ from bills in little more than name and form, and the same rules are substantially applicable to both. 3 Bl.Comm. 261.

—Bill of interpleader. The name of a bill in equity to obtain a settlement of a question of right to money or other property adversely claimed, in which the party filing the bill has no interest, although it may be in his hands, by compelling such adverse claimants to litigate the right or title between themselves, and relieve him from liability or litigation. Republic Casualty Co. *v.* Fischmann, 99 N.J.Eq. 758, 134 A. 179, 180.

—Bill of peace. One which *is* filed when a person has a right which may be controverted by various persons, at different times, and by different actions. Smith v. Cretors, 164 N.W. 338, 340, 181 Iowa 189.

—Bill of review. One which is brought to have a decree of the court reviewed, corrected, or reversed. Dodge v. Northrop, 85 Mich. 243, 48 N.W. 505. It is in the nature of a writ of error. Rubin v. Midlinsky, 327 Ill. 89, 158 N.E. 395.

It is equitable procedure to procure explanation, alteration, or reversal of final decree by court which rendered it. People v. Sterling, 357 Ill. 354, 192 N.E. 229, 234.

The object of a "bill of review" and of a bill in nature of a bill of review in the old chancery practice was to procure a reversal, modification, or explanation of a decree in a former suit. Barz v. *Sawyer,* 159 Iowa 481, 141 N.W. 319, 321.

A "bill of review," or a bill in the nature of a bill of review, are of three classes; those for error appearing on the face of the record, those for newly discovered evidence, and those for fraud impeaching the original transaction. Moore v. Shook, 276 Ill. 47, 114 N.E. 592, 593. Such bills are peculiar to courts of equity at common law. Satterwhite v. State, 149 Ark. 147, 231 S.W. 886, 887.

—Bill of revivor. One which is brought to continue a suit which has abated before its final consummation, as, for example, by death, or marriage of a female plaintiff. Brooks v. Laurent, C.C.A. Fla., 98 F. 647, 39 C.C.A. 201.

—Bill of revivor and supplement. One which is a compound of a supplemental bill and bill of revivor, and not only continues the suit, which has abated by the death of the plaintiff, or the like, but supplies any defects in the original bill arising from subsequent events, so as to entitle the party to relief on the whole merits of his case. Westcott. Bowie v. Minter, 2 Ala. 411.

—Bill quia timet. A bill invoking the aid of equity "because he fears," that is, because the complainant apprehends an injury to his property rights or interests, from the fault or neglect of another. Bisp.Eq. § 568; 2 Story, Eq.Jur. § 826.

Such bills are entertained to guard against possible or prospective injuries, and to preserve the means by which existing rights may be protected from future or contingent violations; differing from injunctions, in that the latter correct past and present or imminent and certain injuries. De Carli v. O'Brien, 41 P.2d 411, 416, 150 Or. 35, 97 A.L.R. 693.

—Bill to carry a decree into execution. One which is filed when, from the neglect of parties or some other cause, it may become impossible to carry a decree into execution without the further decree of the court. Hind, Ch.Pr. 68; Story, Eq.P1. § 42.

—Bill to perpetuate testimony. A bill in equity filed in order to procure the testimony of witnesses to be taken as to some matter not at the time before the courts, but which is likely at some future time to be in litigation. Story, Eq.P1. (5th Ed.) § 300 et seq.

—Bill to quiet possession and title. Also called a bill to remove a cloud on title (q. v.), and though sometimes classed with bills quia *timet* or for the cancellation of void instruments, they may be resorted to in other cases when the complainant's title is clear and there is a cloud to be removed; Maguire v. City of Macomb, 293 Ill. 441, 127 N.E. 682, 686.

—Bill to suspend a decree. One brought to avoid or suspend a decree under special circumstances.

—Bill to take testimony de bene esse. One which is brought to take the testimony of witnesses to a fact material to the prosecution of a suit at law which is actually commenced, where there is good cause to fear that the testimony may otherwise be lost before the time of trial. 2 Story, Eq.Jur. § 1813, n.

—Cross-bill. One which is brought by a defendant in a suit against a plaintiff in or against other defendants in the same suit, or against both, touching the matters in question in the original bill. Story, Eq.P1. § 389; Mitf.Eq.P1. 80.

It is a bill brought by a defendant against a plaintiff, or other parties in a former bill depending, touching the matter in question in that bill. It is usually brought either to obtain a necessary discovery of facts in aid of the defense to the original bill, or to obtain full relief to all parties in reference to the matters of the original bill. It is to be treated as a mere auxiliary suit. Kidder v. Barr, 35 N. H. 251; Blythe v. Hinckley, C.C.Cal., 84 F. 234. A species of pleading, used for the purpose of obtaining a discovery necessary to the defense, or to obtain some relief founded on the collateral claims of the party defendant to the original suit. Tison v. Tison, 14 Ga. 167. Also, if a bill of exchange or promissory note be given in consideration of another bill or notice, it is called a "cross" or "counter" bill or note. Landon v. Public Utilities Commission of Kansas, D.C.Kan., 234 F. 152, 167.

—Supplemental bill. A bill to bring before the court matters arising after the filing of the original bill or not then known to complainant. Puget Sound Power & Light Co. v. City of Seattle, C.C.A.Wash., 5 F. (2d) 393. See Bill in nature of a supplemental bill.

5. In legislation and constitutional law

The word means a draft of an act of the legislature before it becomes a law; a proposed or projected law. A draft of an act presented to the legislature, but not enacted. Hubbard v. Lowe, D.C.N.Y., 226 F. 135, 137. Also a special act passed by a legislative body in the exercise of a *quasi* judicial power. Scudder v. Smith, 331 Pa. 165, 200 A. 601, 604.

The word "bill" may mean the bill as it is first introduced in one of the houses of the legislature, or it may refer to it at any time in any of its stages until finally passed. People v. Brady, 262 Ill. 578, 105 N.E. 1, 4. An *act is* the appropriate term for it, after it has been acted on by, and passed by, the legislature. Herbring v. Brown, 92 Or. 176, 180 P. 328, 330. Thus, bills of attainder, bills of pains and penalties, are spoken of.

—Bill of attainder. See Attainder.

—Bill of indemnity. ' In English law. An act of parliament, passed every session until 1869, but discontinued in and after that year, as having been rendered unnecessary by the passing of the promissory oaths act, 1868, for the relief of those who have unwittingly or unavoidably neglected to take the necessary oaths, etc., required for the purpose of qualifying them to hold their respective offices. Wharton.

—Bill of pains and penalties. A special act of the legislature which inflicts a punishment, less than death, upon persons supposed to be guilty of treason or felony, without any conviction in the ordinary course of judicial proceedings.

It differs from a bill of attainder in this : that the punishment inflicted by the latter is death.

—Private bill. One dealing only with a matter of private personal or local interest. Lowell, Gov. of Eng. 266.

All legislative bills which have for their object some particular or private interest are so termed, as distinguished from such as are for the benefit of the whole community, which are thence termed "public bills." People v. Chautauqua County, 43 N.Y. 17.

—Private bill office. See Private.

—Private member's bill. One of a public nature introduced by a private member;—distinguished from a private bill, which is one dealing only with a matter of private .personal or local interest. Lowell, Gov. of Eng. 266.

6. A solemn and formal legislative declaration of popular rights and liberties

Promulgated on certain extraordinary occasions, as the famous Bill of Rights in English history.

—Bill of rights. A formal and emphatic legislative assertion and declaration of popular rights and liberties usually promulgated upon a change of government; particularly the statute 1 W. & M. St. 2, c. 2. Also the summary of the rights and liberties of the people, or of the principles of constitutional law deemed essential and fundamental, contained in many of the American state constitutions. Hamill v. Hawks, C.C.A.Okl., 58 F.2d 41, 47. That portion of Constitution guaranteeing rights and privileges to the individual. Brown v. State, 219 Ind. 251, 37 N.E.2d 73, 77, 137 A.L.R. 679.

7. In the law of contracts

An obligation; a deed, whereby the obligor acknowledges himself to owe to the obligee a certain sum of money or some other thing. It may be indented or poll, and with or without a penalty.

—Bill obligatory. A bond absolute for the payment of money. It is called also a "single bill," and differs from a promissory note only in having a seal. See Bill penal. Bank v. Greiner, 2 Serg. & R. (Pa.) 115.

—Bill of debt. An ancient term including promissory notes and bonds for the payment of money. Com.Dig. "Merchant," F. 2.

—Bill penal. A written obligation by which a debtor acknowledges himself indebted in a certain sum, and binds himself for the payment thereof, in a larger sum, called a "penalty." Bonds with conditions have superseded such bills in modern practice. They are sometimes called bills obligatory, and are properly so called; but every bill obligatory is not a bill penal. Comyns, Dig. Obligations, D; Cro.Car. 515. See 2 Ventr. 106, 198.

—Bill single. A written promise to pay to a person or persons named a stated sum at a stated time, without any condition. When under seal, as is usually the case, it is sometimes called a "bill obligatory," (*q.* v.) It differs from a "bill penal," (*q.* v.) in that it expresses no penalty.

8. In commercial law

A written statement of the terms of a contract, or specification of the items of a transaction or of a demand; also a general name for any item of indebtedness, whether receivable or payable.

Accounts for goods sold, services rendered, or work done. Newman v. San Antonio Traction Co., Tex.Civ.App., 155 S.W. 688, 690.

As a verb, as generally and customarily used in commercial transactions, "bill" is synonymous with "charge" or "invoice." George M. Jones Co. v. Canadian Nat. R. Co., D.C.Mich., 14 F.2d 852, 855.

—Bill-book. In mercantile law. A book in which an account of bills of exchange and promissory notes, whether payable or receivable, is stated.

—Bill-head. A printed form on which merchants and traders make out their bills and render accounts to their customers.

—Bill of lading. In common law. The written evidence of a contract for the *carriage* and delivery of goods sent by sea for a certain freight. Mason v. Lickbarrow, 1 H.B1. 359. A written memorandum, given by the person in command of a merchant vessel, acknowledging the receipt on board the ship of certain specified goods, in good order or "apparent good order," which he undertakes, in consideration of the payment of freight, to deliver in like good order (dangers of the sea excepted) at a designated place to the consignee therein named or to his assigns. Devato v. Barrels, D.C.N.Y., 20 Fed. 510.

The term is often applied to a similar receipt and undertaking given by a carrier of goods by land. A bill of lading is an instrument in writing, signed by a carrier or his agent, describing the freight so as to identify it, stating the name of the consignor, the terms of the contract for carriage, and agreeing or directing that the freight be delivered to the order or assigns of a specified person at a specified place. See Civil Code Cal. § 2126a; Aman v. Dover & Southbound R. Co., 179 N. C. 310, 102 S.E. 392, 393; Rudin v. King-Richardson Co., 143 N.E. 198, 201, 311. Ill. 513. It is receipt for goods, contract for their carriage, and is documentary evidence of title to goods. Schwalb v. Erie R. Co., 293 N.Y.S. 842, 846, 161 Misc. 743.

A *clean* bill of lading is one which contains nothing in the margin qualifying the words in the bill of lading itself. 61 Law T. 330; Creery v. Holly, 14 Wend. (N.Y.) 26; Sayward v. Stevens, 3 Gray (Mass.) 97.

An *order* bill of lading is one in which it is stated that goods are consigned to order of any person named therein. F. L. Shaw Co. v. Coleman, Tex.Civ.App., 236 S.W. 178, 180.

A *straight* bill of lading is one in which it is stated that goods are consigned to a specified person. Atlantic Coast Line R. Co. v. Roe, 91 Fla. 762, 109 So. 205, 207.

A *through* bill of lading is one by, which a railroad contracts to transport over its own line for a certain distance carloads of merchandise or stock, there to deliver the same to its connecting lines to be transported to the place of destination at a fixed rate per carload for the whole distance. Gulf, C. & S. F. R. Co. v. Vaughn, 4 Willson, Ct. App.Tex. § 182, 16 S.W. 775.

—Bill of parcels. A statement sent to the buyer of goods, along with the goods, exhibiting in detail the items composing the parcel and their several prices, to enable him to detect any mistake or omission; an invoice.

—Bill of sale. In contracts. A written agreement, formerly limited to one under seal, by which one person assigns or transfers his right to or interest in goods and personal chattels to another. Wilson. v. Voche, 172 S.E. 672, 48 Ga.App. 173. An instrument by which, in particular, the property in ships and vessels is conveyed. Young v. Stone, 70 N.Y.S. 558, 61 App.Div. 364. See Grand bill of sale, *infra.*

—Bill payable. In a merchant's accounts, all bills which he has accepted, and promissory notes which he has made, are called "bills payable," and are entered in a ledger account under that name, and recorded in a book bearing the same title. See West Virginia Pulp & Paper Co. v. Karnes, 137 Va. 714, 120 S.E. 321, 322.

—Bill receivable. In a merchant's accounts, all notes, drafts, checks, etc., payable to him, or of which he is to receive the proceeds at a future date, are called "bills receivable," and are entered in a ledger-account under that name, and also noted in a book bearing the same title. State v. Robinson, 57 Md. 501. Miami Coal Co. v. Fox, 203 Ind. 99, 176 N.E. 11, 16, 79 A.L.R. 333.

—Bill rendered. A bill of items rendered by a creditor to his debtor; an "account rendered," as distinguished from "an account stated." Hill v. Hatch, 11 Me. 455.

—Grand bill of sale. In English law. The name of an instrument used for the transfer of a ship while she is at sea. An expression which is understood to refer to the instrument whereby a ship was originally transferred from the builder to the owner, or first purchaser. 3 Kent, Comm. 133.

### 9. In the law of negotiable instruments

A promissory obligation for the payment of money.

Standing alone or without qualifying words, the term is understood to mean a bank note, United States treasury note, or other piece of paper circulating as money. Green v. State, 28 Tex.App. 493, 13 S.W. 785.

—Bill of credit. In constitutional law. A bill or promissory note issued by the government of a state or nation, upon its faith and credit, designed to circulate in the community as money, and redeemable at a future day. Hale v. Huston, 44 Ala. 138, 4 Am.Rep. 124. In mercantile law. A license or authority given in writing from one person to another, very common among merchants, bankers, and those who travel, empowering a person to receive or take up money of their correspondents abroad.

—Bill of exchange. A written order from A. to B., directing B. to pay to C. a certain sum of money therein named. Byles, Bills, 1. An open ( that is, unsealed) letter addressed by one person to another directing him, in effect, to pay, absolutely and at all events, a certain sum of money therein named, to a third person, or to any other to whom that third person may order it to be paid, or it may be payable to bearer or to the drawer himself. 1 Daniel, Neg.Inst. 27.

An unconditional order in writing addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand or at a fixed or determinable future time a sum certain in money to order or to bearer. Clayton Town-Site Co. v. Clayton Drug Co., 147 P. 460, 20 N.M. 185; Smythe v. Sanders, 101 So. 435, 436, 136 Misc. 382; Sometimes called a "trade acceptance." Jones v. Revere Preserving Co., 247 Mass. 225, 142 N.E. 70, 71.

A "check" differs from a "bill of exchange" in that it is always drawn on a deposit whereas a bill is not. Wilson v. Buchenau, D.C.Cal., 43 F.Supp. 272, 275.

—Domestic bill of exchange. A bill of exchange drawn on a person residing in the same state with the drawer; or dated at a place in the state, and drawn on a person living within the state. It *is* the residence of the drawer and drawee which must determine whether a bill is domestic or foreign. Ragsdale v. Franklin, 25 Miss. 143. See, also, Inland bill of exchange.

—Foreign bill of exchange. A bill of exchange drawn in one state or country, upon a foreign state or country. See Story, Bills, § 22; 3 Kent, Comm. 94, note.

A bill of exchange drawn in one country upon another country not governed by the same homogeneous laws, or not governed throughout by the same municipal laws. A bill of exchange drawn in one of the United States upor a person residing in another state Is a foreign bill.

—Inland bill of exchange. One of which the drawer and drawee are residents of the same state or country. Miller v. American Gold Mining Co., 3 Alaska, 1. See Domestic bill of exchange.

### 10. In maritime law

The term is applied to contracts of various sorts, but chiefly to bills of lading and to bills of adventure.

—Bill of adventure. A written certificate by a merchant or the master or owner of a ship, to the effect that the property and risk in goods shipped on the vessel in his own name belong to another person, to whom he is accountable for the proceeds alone.

—Bill of gross adventure. In French maritime law. Any written instrument which contains a contract of bottomry, *respondentia,* or any other kind of maritime loan. There is no corresponding English term. Hall, Marit. Loans, 182, n.

—Bill of health. An official certificate, given by the authorities of a port from which a vessel clears, to the master of the ship, showing the state of the port, as respects the public health, at the time of sailing, and exhibited to the authorities of the port which the vessel next makes, in token that she does not bring disease.

If the bill alleges that no contagious or infectious disease existed, it is called a "clean" bill; if it admits that one was suspected or anticipated, or that one actually prevailed, it is called a "touched" or a "foul" bill.

11. In revenue law and procedure

The term is given to various documents filed in or issuing from a custom house, principally of the sorts described below.

—Bill of entry. An account of the goods entered at the custom-house, both incoming and outgoing. It must state the name of the merchant exporting or importing, the quantity and species of merchandise, and whither transported, and whence.

—Bill of sight. When an importer of goods is ignorant of their exact quantity or quality, so that he cannot make a perfect entry of them, he may give to the customs officer a written description of them, according to the best of his information and belief. This is called a "bill of sight."

—Bill of store. In English law. A kind of license granted at the custom-house to merchants, to carry such stores and provisions as are necessary for their voyage, custom free. Jacob.

—Bill of sufferance. In English law. A license granted at the custom-house to a merchant, to suffer him to trade from one English port to another, without paying custom. Cowell.

12. In criminal law

A bill of indictment, see *infra.*

—Bill of appeal. An ancient, but now abolished, method of criminal prosecution. See Battel.

—Bill of indictment. A formal written document accusing a person or persons named of having committed a felony or misdemeanor, lawfully laid before a grand jury for their action upon it. State v. Ray, Rice (S.C.) 4, 33 Am.Dec. 90. See Presentment.

If the grand jury decide that a trial ought to be had, they indorse on it "a true bill;" if otherwise, "not a true bill" or "not found."

13. In common-law practice

An itemized statement or specification of particular details, especially items of cost or charge. .

of costs. A certified, itemized statement of the amount of costs in an action or suit. Doe v. Thompson, 22 N.H. 219.

By the English usage, this term *is* applied to the statement of the charges and disbursements of an attorney or solicitor incurred in the conduct of his client's business, and which might be taxed upon application, even though not incurred in any suit. Thus, conveyancing costs might be taxed. Wharton.

—Bill of particulars. In practice. A written statement or specification of the particulars of the demand for which an action at law is brought, or of a defendant's set-off against such demand, (including dates, sums, and items in detail,) furnished by one of the parties to the other, either' voluntarily or in compliance with a judge's order for that purpose. 1 Tidd, Pr. 596-600; 2 Archb.Pr. 221; Ferguson v. Ashbell, 53 Tex. 250; Baldwin v. Gregg, 13 Metc. (Mass.) 255.

It *is* designed to aid the defendant in interposing the proper answer and in preparing for trial, *by* giving him detailed information regarding the cause of action stated in the complaint. Wetmore v. Goodwin Film & Camera Co., (D.C.) 226 F. 352, 353. It is neither a pleading nor proof of the facts therein contained, Nilson v. Ebey Land Co., 90 Wash. 295, 155 P. 1036, and is not for the purpose of discovering evidence, nor to find what plaintiff knows, but what he claims, Intermountain Ass'n of Credit Men v. Milwaukee Mechanics' Ins. Co., 44 Idaho 491, 258 P. 362, 363. A bill of particulars is not designed to uphold an insufficient indictment, but to give accused fair notice of what he is called on to defend. Clary v. Commonwealth, 163 Ky. 48, 173 S. W. 171, 173. People v. Bain, 359 Ill. 455, 195 N.E. 42.

14. In English law

A draft of a patent for a charter, commission, dignity, office, or appointment.

Such a bill is drawn up in the attorney general's patent bill office, is submitted by a secretary of state for the King's signature, when it is called the "King's bill," and is then countersigned by the secretary of state and sealed by the privy seal, and then the patent is prepared and sealed. Sweet.

For Exchequer Bills, see that title.

BILL OF MORTALITY. A written statement or account of the number of deaths which have occurred in a certain district within a given time.

BILLA. L. Lat. A bill; an original bill.

BILLA CASSETUR, or QUOD BILLA CASSETUR. (That the bill be quashed.) In practice. The form of the judgment rendered for a defendant on a plea in abatement, where the proceeding is *by bill;* that is, where the suit is commenced by *capias,* and not by original writ. 2 Archb.Pr.K.B. 4.

BILLA EXCAMBIL A bill of exchange.

BILLA EXONERATION'S. A bill of lading.

BILLA VERA. (A true bill.) In old practice. The indorsement anciently made on a bill of indictment by a grand jury, when they found it sufficiently sustained by evidence. 4 Bl.Comm. 306.

BILLBOARD. An erection annexed to the land in the nature of a fence for the purpose of posting advertising bills and posters. Randall v. Atlanta Advertising Service, 159 Ga. 217, 125 S.E. 462, 463; Cochrane v. McDermott Advertising Agency, 6 Ala.App. 121, 60 So. 421, 422.

BILLET. A soldier's quarters in a civilian's house; or the ticket which authorizes him to occupy them.

In French law. A bill or promissory note. *Billet* a *ordre,* a bill payable to order. *Billet a vue,* a bill payable at sight. *Billet de complaisance,* an accommodation bill. *Billet de change,* an engagement to give, at a future time, a bill of exchange, which the party is not at the time prepared to give. Story, Bills, § 2, n.

BILLETA. In old English law. A bill or petition exhibited in parliament. Cowell.

BILLIARD TABLES. This term includes "pool tables" as used in statutes, since "pool tables" are

billiard tables with pockets. Village of Atwood *V.* Otter, 296 Ill. 70, 129 N.E. 573, 578.

BILLY. A small bludgeon that may be carried in the pocket; a club; especially, a policeman's dub. Cent. Dict.; Webster, New Intl. Dict.

RI-METALLIC. Pertaining to, or consisting of, two metals used as money at a fixed relative value.

BI-METALLISM. The legalized use of two metals in the currency of a country at a fixed relative value.

BIND. To obligate; to bring or place under definite duties or legal obligations, particularly by a bond or covenant; to affect one in a constraining or compulsory manner with a contract or a judgment. Stone v. Bradbury, 14 Me. 193.

So long as a contract, an adjudication, or a legal relation remains in force and virtue, and continues to impose duties or obligations, it is said to be *"binding."* A man is bound by his contract or promise, by a judgment or dt,-cree against him, by his bond or covenpnt, *by* an estoppel, etc.

BIND OUT. To place one under a legal obligation to serve another; as to *bind out* an apprentice.

BINDER. The memorandum of an agreement for insurance, intended to give temporary protection pending investigation of the risk and issuance of a formal policy. Seiderman v. Herman Perla Inc., 268 N.Y. 188, 197 N.E. 190, 191.

A verbal contract of insurance in prsenti, of which the insurance agent makes a memorandum, temporary in its nature, Norwich Union Fire Ins. Society v. Dalton, Tex. Civ.App., 175 S.W. 459, 460; thus constituting a short method of issuing a temporary policy to continue until execution of the formal one, Sherri v. National Surety Co., 243 N.Y. 266, 153 N.E. 70, 71. Carew, Shaw & Bernaseoni v. General Casualty Co. of America, 189 Wash. 329, 65 P.2d 689, 695.

A "binder" as used in marine insurance is an application for insurance made on behalf of the proposed insured and approved by the insurer or his agent. Muller v. Globe & Rutgers Fire Ins. Co. of City of New York, C.C.A.N.Y., 246 F. 759, -760.

BINDING INSTRUCTION. One in which jury is told if they find certain conditions to be true to find for plaintiff or defendant, as case might be. Scott-Burr Stores Corporation v. Foster, 197 Ark. 232, 122 S.W.2d 165, 169.

BINDING OVER. The act by which a court or magistrate requires a person to enter into a recognizance or furnish bail to appear for trial, to keep the peace, to attend as a witness, etc.

BINDING RECEIPT OR SLIP. Is a limited acceptance of an application for insurance given by an authorized agent pending the ascertainment of the company's willingness to assume the burden of the proposed risk, the effect of which is to protect the applicant until the company acts upon the application, and, if it declines to accept the burden, the binding effect of the slip ceases eo instante. Hanauer v. Fire Ass'n of Philadelphia, 83 W.Va. 401, 98 S.E. 441, 443; Seiderman *v.* Herman Perla, Inc., 268 N.Y. 188, 197 N.E. 190, 191.

BINOCULAR VISION. The vision of the two eyes acting together, used in determining depth, width, distance, and comparative placing of different objects; distinguished from "field vision," meaning the general vision used in catching in sight, and following and locating objects. Gigleo v. Dorfman & Kimiasky, 106 Conn. 401, 138 A. 448, 450.

BIPARTITE. Consisting of, or divisible into, two parts. A term in conveyancing descriptive of an instrument in two parts, and executed by both parties.

BIRRETUM, BIRRETUS. A cap or coif used formerly in England by judges *and* serjeants at law. Spelman.

BIRTH. The act of being born or wholly brought into separate existence. Wallace v. State, 10 Tex. App. 270.

BIS. Lat. Twice.

BIS DA.T QUI CITO DAT. He pays twice who pays promptly.

BIS IDEM EXIGI BONA FIDES NON PATITUR; ET IN SATISFACTIONIBUS NON PERMXTTITUR AMPLIUS FIERY QUAM SEMEL FACTUM EST. Good faith does not suffer the same thing to be demanded twice ; and in making satisfaction [for a debt or demand] it is not allowed to be done more than once. 9 Coke, 53.

BISAILE (also BESAILE, BESAYEL, BESAYEL, BESAYLE). The father of one's grandfather or grandmother.

BISANTIUM, BESANTINE, BEZANT. An ancient coin, first issued at Constantinople; it was of two sorts,--gold, equivalent to a ducat, valued at 9s. 6d.; and silver, computed at 2s. They were both current in England. Wharton.

RI-SCOT. In old Engish law. A fine imposed for not repairing banks, ditches, and causeways.

BISHOP. In English law. An ecclesiastical dignitary, being the chief of the clergy within his diocese, subject to the archbishop of the province in which his diocese is situated. Most of the bishops are also members of the House of Lords.

BISHOP'S COURT. In English law. An ecclesiastical court, held in the cathedral of each diocese, the judge whereof is the bishop's chancellor, who judges by the civil canon law; and, if the diocese be large, he has his commissaries in remote parts, who hold consistory courts, for matters limited to them by their commission.

BISHOPRIC. In ecclesiastical law. The diocese of a bishop, or the circuit in which he has jurisdiction; the office of a bishop. 1 Bl.Comm. 377-382.

BISSEXTILE. The day which *is* added every fourth year to the month of February, in order to make the year agree with the course of the sun.

By statute 21 Hen. III., the 28th and 29th of February count together as one day. This statute is in force in some of the United States. Porter v. Holloway, 43 Ind. 35; Harker v. Addis, 4 Pa. 515.

BITING RULE. When first taker of conveyed property under writing submitted for construction is initially conveyed a fee title, it is then incompetent and invalid to modify, qualify, or reduce thereafter the apparent fee title of the first taker so as to reduce it to a life estate, and any gift over after death of first taker is void. Hanks v. McDanell, 210 S.W.2d 784, 786, 307 Ky. 243, 17 A.L.R.2d 1.

BITULITHIC. Designating a kind of paving the main body of which consists of broken stone cemented together with bitumen or asphalt. Washburn v. Board of Com'rs of Shawnee County, 103 Kan. 169, 172 P. 997, 998. Bituminous macadam means bitulithic pavement. Washburn v. Board of Com'rs of Shawnee County, 103 Kan. 169, 172 P. 997, 998. See Bitumen.

BITUMEN. Mineral pitch; black, tarry substance used in cements, in construction of pavements, etc., and by extension, the term includes any one of natural hydrocarbons, including hard, solid, brittle varieties called asphalt, semi-solid maitha and mineral tars, oily petroleums, and light volatile naphthas. Western Willite Co. v. Trinidad Asphalt Mfg. Co., C.C.A.Mo., 16 .F.2d 446, 448.

BITUMINOUS COAL. Bituminous coal is much less hard than anthracite; it is dusty and dirty and is commonly termed "soft coal." Bituminous coal burns with more or less smoke while anthracite coal burns with practically no smoke. As the fuel ratio of bituminous coal rises the coal is more soft; as the fuel ratio of anthracite coal rises the coal is more hard. Commonwealth v. Hudson Coal Co., 287 Pa. 64, 134 A. 413, 414. See Anthracite coal.

BITUMINOUS MACADAM. Bitulithic pavement. Washburn v. Board of Com'rs of Shawnee County, 103 Kan. 169, 172 P. 997, 998. See Bitulithic.

BLACK ACRE and WHITE ACRE. Fictitious names used by the old writers to distinguish one parcel of land from another, to avoid ambiguity, as well as the inconvenience of a fuller description.

BLACK ACT. The statute 9 Geo. I. c. 22, so called because it was occasioned by the outrages committed by persons with their faces blacked or otherwise disguised, who appeared in Epping Forest, near Waltham, in Essex, and destroyed the deer there, and committed other offenses. Repealed by 7 & 8 Geo. IV, c. 27.

BLACK ACTS. Old Scotch statutes passed in the reigns of the Stuarts and down to the year 1586 or 1587, so called because printed in black letter. Bell.

BLACK BOOK OF HEREFORD. In English law, An old record frequently referred to by Cowell and other early writers.

BLACK BOOK OF THE ADMIRALTY. A book of the highest authority in admiralty matters, generally supposed to have been compiled during the reign of Edward III. with additions of a later date. It contains the laws of Oleron, a view of crimes and offenses cognizable in the admiralty, and many other matters. See De Lovio v. Boit, 2 Gall. 404, Fed.Cas.No.3,776.

BLACK BOOK OF THE EXCHEQUER. The name of an ancient book kept in the English exchequer, containing a collection of treaties, conventions, charters, etc.

BLACK CAP. The head-dress worn by the judge in pronouncing the sentence of death. It is part of the judicial full dress, and is worn by the judges on occasions of especial state. Wharton.

BLACK CODE. A name given collectively to the body of laws, statutes, and rules in force in various southern states prior to 1865, which regulated the institution of slavery, and particularly those forbidding their reception at public inns and on public conveyances. Civil Rights Cases, 3 S.Ct. 18, 109 U.S. 3, 27 L.Ed. 835.

BLACK GAME. In English law. Heath fowl, in contradistinction to red game, as grouse.

BLACK LIQUOR. A term used in the paper pulp industry. It denotes a residual liquor coming from the digesters in which wood chips are cooked. Babcock & Wilcox Co. v. North Carolina Pulp Co., D.C.Del., 35 F.Supp. 215, 221.

BLACK MARIA. A closed wagon or van in which prisoners are carried to and from the jail, or between the court and the jail.

BLACK MAT CABARETTA. A cross between a goatskin and a skin of some other animal. J. H. Stockamore Leather Co. v. Duane Shoe Co., 187 N.Y.S. 258, 195 App.Div. 947.

BLACK MUSLIM. An organization of American Negroes, founded in Detroit in 1930 by an American Negro calling himself Mohammad Elijah. To the traditional Koran the founders added the doctrine of Black Supremacy and proclaimed the desirability of maintaining ( or regaining) the purity of the black race. 62 Col.L.Rev. 1488 (1962) 75 Harv.L.Rev. 837 (1962) ; State v. Cubbage (Del.), 210 A.2d 555 (1965).

BLACK RENTS. In old English law. Rents reserved in work, grain, provisions, or baser money than silver, in contradistinction to those which were reserved in *white* money or silver, which were termed "white rents," *(reditus albi,)* or blanch farms. Tomlins; Whishaw. See Blackmail.

BLACK—ROD, GENTLEMAN USHER OF. In England, the title of a chief officer of the king, deriving his name from the *Black Rod* of office, on the top of which reposes a golden lion, which he carries. During the session of Parliament he attends on the peers, summons the Commons to the House of Lords; and to his custody all peers impeached for any crime or contempt are first committed.

BLACK WARD. A subvassal, who held ward of the king's vassal.

BLACKJACK. A short bludgeon consisting of a heavy head, as of metal, on an elastic shaft or with a flexible handle; a bludgeon-like weapon consisting of a lead slug attached to a leather thong; a small leather-covered club or billy weighted at the head and having an elastic shaft. 5 Words and Phrases, Perm. Ed.

As a card game, another name for *vingt-et-un* (twenty-one) ; also; a variety of hearts in which the jack of spades counts as ten hearts. Webster, New Intl. Dict.

BLACKLEG. A person who gets his living by frequenting race-courses and places where games of chance are played, getting the best odds, and giving the least he can, but not necessarily cheating. That is not indictable either by statute or at 'common law. Barnett v. Allen, 3 Hurl. & N. 379.

In a later case it has been thought that "blackleg" ordinarily means a swindler, but does not mean a "scab" or strike breaker, and that its use may be libelous per se. United Mine Workers of America v. Cromer, 159 Ky. 605, 167 S. W. 891, 892.

BLACKLIST. A list of persons marked out for special avoidance, antagonism, or enmity on the part of those who prepare the list or those among whom it is intended to circulate; as where a trades-union "blacklists" workmen who refuse to conform to its rules, or where a list of insolvent or untrustworthy persons is published by a commercial agency or mercantile association. Quoted and relied on in Dick v. Northern Pac. Ry. Co., 86 Wash. 211, 150 P. 8, 12, Ann.Cas.1917A, 638, holding that this word is a generic term having no such well-defined meaning in law as to make its use in a pleading a definite charge of any specific misconduct against a person so charged. Cleary v. Great Northern Ry. Co., 147 Minn. 403, 180 N.W. 545, 546; Masters v. Lee, 39 Neb. 574, 58 N.W. 222; Mattison v. Railway Co., 2 Ohio N.P. 279.

BLACKMAIL. In one of its original meanings, this term denoted a tribute paid by English dwellers along the Scottish border to influential chieftains' of Scotland, as a condition of securing immunity from raids of marauders and border thieves.

Also, rents payable in cattle, grain, work, and the like. Such rents were called "blackmail," *(reditus nigri,)* in distinction from white rents, *(blanche firmes,)* which were rents paid in silver. See Black rents.

The extortion of money by threats or overtures towards criminal prosecution or the destruction of a man's reputation or social standing.

In common parlance, the term is equivalent to and synonymous with, "extortion,"—the exaction of money, either for the performance of a duty, the prevention of an injury, or the exercise of an influence. It supposes the service to be unlawful, and the payment involuntary. Not infrequently it is extorted by threats, or by operating upon the fears or the credulity, or by promises to conceal, or offers to expose, the weaknesses, the follies, or the crimes of the victim. Mitchell v. Sharon, C.C.Cal., 51 F. 424; In re Mills, 104 Wash. 278, 176 P. 556, 562. "Blackmail" has a broader meaning than the New York statutory crime of blackmail, and denotes extortion in any mode by means of intimidation, as the extortion of money by threats of accusation or exposure, or of unfavorable criticism in the press. Guenther v. Ridgway Co., 156 N.Y.S. 534, 535, 170 App. Div. 725.

BLACKSMITH SHOP. A place to which the people of a community resort for the purpose of having machinery and tools repaired and iron work done. State v. Shumaker, 103 Kan. 741, 175 P. 978, 979.

BLADA. In old English law. Growing crops of grain of any kind. Spelman. All manner of annual grain. Cowell. Harvested grain. Bract. 217b; Reg.Orig. 94b, 95.

BLADARIUS. In old English law. A cornmonger; meal-man or corn-chandler; a bladier, or engrosser of corn or grain. Blount.

BLANC SEIGN. In Louisiana, a paper signed at the bottom by him who intends to bind himself, give acquittance, or compromise, at the discretion of the person whom he intrusts with such *blanc seign,* giving him power to fill it with what he may think proper, according to agreement. Musson v. U. S. Bank, 6 Mart.O.S. (La.) 718.

BLANCH HOLDING. An ancient tenure of the law of Scotland, the duty payable being trifling, as a penny or a pepper-corn, etc., if required; similar to free and common socage.

BLANCHE FIRME. White rent; a rent reserved, payable in silver.

BLANCUS. In old law and practice. White; plain; smooth; blank.

BLANK. A space left unfilled in a written document, in which one or more words or marks are to be inserted to complete the sense. Angle v. Insurance Co., 92 U.S. 337, 23 L.Ed. 556.

Also a skeleton or printed form for any legal document, in which the necessary and invariable words are printed in their proper order, with blank spaces left for the insertion of such names, dates, figures, additional clauses, etc., as may be necessary to adapt the instrument to the particular case and to the design of the party using it.

BLANK ACCEPTANCE. An acceptance of a bill of exchange written on the paper before the bill is made, and delivered by the acceptor.

BLANK BAR. Also called the "common bar." The name of a plea in bar which in an action of trespass is put in to oblige the plaintiff to assign the certain place where the trespass was committed. It was most in practice in the common bench. See Cro.Jac. 594.

BLANK BONDS. Scotch securities, in which the creditor's name was left blank, and which passed by mere delivery, the bearer being at liberty to put in his name and sue for payment. Declared void by Act 1696, c. 25.

BLANK INDORSEMENT. The indorsement of a bill of exchange or promissory note, by merely

writing the name of the indorser, without mentioning any person to whom the bill or note is to be paid; called "blank," because a blank or space is left *over* it for the insertion of the name of the indorsee, or of any subsequent holder. Otherwise called an indorsement "in blank." 3 Kent, Comm. 89; Story, Prom. Notes, § 138.

BLANKET. In tariff acts: A heavy cover for a bed or a horse, with a thick, soft nap on both sides. Riley & Co. v. U. S., 8 Ct.Cust.App. 116, 118.

BLANKET POLICY. See Insurance—Blanket Policy.

BLANKS. A kind of white money, (value 8d.,) coined by Henry V. in those parts of France which were then subject to England; forbidden to be current in that realm by 2 Hen. VI. c. 9. Wharton.

BLASARIUS. An incendiary.

BLASPHEMY.

In English Law

Blasphemy is the offense of speaking matter relating to God, Jesus Christ, the Bible, or the Book of Common Prayer, intended to wound the feelings of mankind or to excite contempt and hatred against the church by law established, or to promote immorality. Sweet.

In American Law

Any oral or written reproach maliciously cast upon God, His name, attributes, or religion. Com. v. Kneeland, 20 Pick. (Mass.) 213; Young v. State, 10 Lea (Tenn.) 165; People v. Ruggles, 8 Johns. (N.Y.) 290, 5 Am.Dec. 335; Updegraph v. Corn., 11 Serg. & R. (Pa.) 406.

In general, blasphemy may be described as consisting in speaking evil of the Deity with an impious purpose to derogate from the divine majesty, and to alienate the minds of others from the love and reverence of God.

It is purposely using words concerning God calculated and designed to impair and destroy the reverence, respect, and confidence due to Him as the intelligent creator, governor, and judge of the world. It embraces the idea of detraction, when used towards the Supreme Being, as "calumny" usually carries the same idea when applied to an individual. It is a willful and malicious attempt to lessen men's reverence of God by denying His existence, or His attributes as an intelligent creator, governor, and judge of men, and to prevent their having confidence in Him as such. Corn. v. Kneeland, 20 Pick. (Mass.) 211, 212.

The use of this word is, in modern law, exclusively confined to sacred subjects; but *blasphemia* and *blasphemare* were anciently used to signify the reviling by one person of another. Nov. 77, c. 1, § 1; Spelman.

BLASTING. Practice or occupation of rending heavy masses, especially of rock, by means of explosives, as in oil well drilling, quarrying, etc. Seismic Explorations v. Dobray, Tex.Civ.App., 169 S.W.2d 739, 742.

BLEACHERS. A relatively low-priced seat for a spectator at sports or games, or the section or structure ( originally roofless) containing such seats. Lowden v. Jefferson County Excise Board, 122 P.2d 991, 992, 190 Okl. 276; Zeitz v. Coopers-town Baseball Centennial, N.Y.Sup., 29 N.Y.S.2d 56, 57.

BLEES. In old English law. Grain; particularly corn.

BLENCH, BLENCH HOLDING. See Blanch Holding.

BLENDED FUND. In England, where a testator directs his real and personal estate to be sold, and disposes of the proceeds as forming one aggregate, this is called a "blended fund."

BLENDED PRICE. As applied to milk, a price paid to producers based upon a pool average weighted by the volume of milk disposed of, according to different types of utilization. Queensboro Farm Products v. State, 24 N.Y.S.2d 413, 417, 175 Misc. 574.

BLETA. An old name for peat or combustible earth dug up and dried for burning. Wharton.

BLIND. The condition of one who is deprived of the faculty of seeing.

A voter is not "blind" within the meaning of Ky. St. § 1475, authorizing clerk to mark ballot for blind person, if he has left his spectacles at home, but a person so devoid of sight that he cannot see pencil mark made by clerk is "blind." Smith v. Jones, 221 Ky. 546, 299 S.W. 170, 171. One who by accident lost all vision except enough to enable him to recognize a form without distinguishing its outlines is "blind" within the Workmen's Compensation Act. Industrial Commission of Colorado v. Johnson, 64 Colo. 461, 172 P. 422, 423.

BLIND CAR. On railroads, one on which there is neither steps nor platform at the ends. Helm v. Hines, 109 Kan. 48, 196 P. 426.

BLIND CORNER. One where the building extends to the property line. Mobile Light & R. Co. v. Gadik, 211 Ala. 582, 100 So. 837, 838.

BLIND NAILING. "Blind nailing," in a contract relating to the interior finish of a house, means driving the nails in with a nail set, and concealing them with putty and paint. Sterling Engineering and Construction Co. v. Berg, 161 Wis. 280, 152 N.W. 851, 852.

BLIND TIGER. A place where intoxicants are sold on the sly, and contrary to the law. Town of Ruston v. Fountain, 118 La. 53, 42 So. 644; City of Shreveport v. Maroun, 134 La. 490, 64 So. 388, 389. A "tippling-house." Calhoun v. Bell, 136 La. 149, 66 So. 761, 762, Ann.Cas.1916D, 1165.

BLIND WAGON. Such as one used for moving furniture and the like, is one without the name or address of the owner of it thereon. Mike Berniger Moving Co. v. O'Brien, Mo.App., 240 S.W. 481, 483.

BLINDCRAFT. A natural descriptive term identifying in a broad sense work of the blind, conveying the idea of the blind performing deftly at any of the various skills or trades to which their talents are applied or leaving the suggestion of dexterity and skill of the blind as well as their handiwork itself. San Francisco Ass'n for Blind v. Industrial Aid for Blind, D.C.Mo., 58 F.Supp. 995, 1001.

BLINKS. In old English law. Boughs broken down from trees and thrown in a way where deer are likely to pass. Jacob.

BLOCK. A square or portion of a city or town inclosed by streets, whether partially or wholly occupied by buildings or containing only vacant lots. Also used synonymous with "square." Weeks v. Hetland, 202 N.W. 807, 812, 813, 52 N.D. 351. The platted portion of a city surrounded by streets. Cravens v. Putnam, 101 Kan. 161, 165 P. 801, 802. The term need not, however, be limited to blocks platted as such, but may mean an area bounded on all sides by streets or avenues. St. Louis-San Francisco R. Co. v. City of Tulsa, Okl., C.C.A.Okl., 15 F.2d 960, 963. It must be surrounded on at least three sides by streets, which must be marked on the ground, and not simply indicated as such on a plat. Seested *v.* Dickey, 318 Mo. 192, 300 S.W. 1088, 1098.

BLOCK BOOK SYSTEM. An abstract of property assessed for taxes and also of property unrendered and of which owners were unknown, together with maps and plats. Southern Surety Co. v. Lafferty, Tex.Civ.App., 43 S.W.2d 460, 463.

BLOCK-BOOKING. The practice of licensing or offering for license one motion picture feature or group of features on condition that exhibitor will also license another feature or group of features released by distributor during a given period. U. S. v. Paramount Pictures, N.Y., 68 S.Ct. 915, 928, 334 U.S. 131, 92 L.Ed. 1260.

BLOCK-HOLER. One who follows up the miner to blast or throw down large rocks left in the process of mining in a "stope." Mesich v. Tamarack Mining Co., 184 Mich. 363, 151 N.W. 564, 566.

BLOCH OF SURVEYS. In Pennsylvania land law. Any considerable body of contiguous tracts surveyed in the name of the same warrantee, without regard to the manner in which they were originally located; a body of contiguous tracts located by exterior lines, but not separated from each other by interior lines. Morrison v. Seaman, 183 Pa. 74, 38 A. 710.

BLOCK TO BLOCK RULE. The "block to block rule" for assessing the benefits for the opening of a new street *is*, the assessment against the lots in each block of the cost of acquiring the lands in that block. In re St. Raymona Ave. in City of New York, 162 N.Y.S. 185, 188, 175 App.Div. 518.

BLOCKADE. In international law. A marine Investment or beleaguering of a town or harbor. A sort of circumvallation round a place by which all foreign connection and correspondence is, as far as human power can effect it, to be cut off. 1 C.Rob.Adm. 151.

*It* is not necessary, however, that the place should be invested by land, as well *as* by sea, in order to constitute a legal blockade; and, if a place be blockaded by sea only, it is no violation of belligerent rights for the neutral to carry on commerce with it by inland communications. 1 Kent, Comm. 147.

The actual investment of a port or place by a hostile force fully competent, under ordinary circumstances, to cut off all communication therewith, so arranged or disposed as to be able to apply its force to every point of practicable access or approach to the port or place so invested. The Olinde Rodrigues, D.C.S.C., 91 Fed. 274; Id., 19 S.Ct. 851, 174 U.S. 510, 43 L.Ed. 1065; The Peterhoff, 5 Wall. 50, 18 L.Ed. 564; Grinnan v. Edwards, 21 W.Va. 347.

It is called a "blockade *de facto*" when the usual notice of the blockade has not been given to the neutral powers by the government causing the investment, in consequence of which the blockading squadron has to warn off all approaching vessels.

Pacific Blockade

A means of coercion short of war, usually adopted by the joint action of several nations.

An instance of it occurred when Great Britain and Germany united to prevent the slave traffic and stop the importation of arms on the east coast of Africa. Snow. Int. Law 79. In 1827 Greece was blockaded by France, Russia, and Great Britain; in 1850 the Greek ports were blockaded by Great Britain, and again in 1855 by the combined fleets of the five Great Powers. In 1887 the Institute of International Law unanimously declared in favor of the legality of pacific blockade, subject to certain conditions. See 21 L. Mag. & Rev. 285; 2 Oppen. §§ 40-49.

Paper Blockade

The state of a line of coast proclaimed to be under blockade in time of war, when the naval force on watch is not sufficient to repel a real attempt to enter.

Public Blockade

A blockade which is not only established in fact, but is notified, by the government directing it, to other governments; as distinguished from a *simple* blockade, which may be established by a naval officer acting upon his own discretion or under direction of superiors, without governmental notification. The Circassian, 2 Wall. 150, 17 L. Ed. 796.

Simple Blockade

One established by a naval commander acting on his own discretion and responsibility, or under the direction of a superior officer, but without governmental orders or notification. The Circassian, 2 Wall. 150, 17 L.Ed. 796.

BLOCKAGE. Recognition in the field of taxation of fact that in some instances a large block of stock cannot be marketed and turned into cash as readily as a few shares. Citizens Fidelity Bank & Trust Co. v. Reeves, Ky., 259 S.W.2d 432, 433.

BLOCKAGE RULE. Process of determining value of large blocks of corporate stock for gift and estate tax purposes, based on the postulate that a large block of stock cannot be marketed as readily and as advantageously in price as can a few shares. Montclair Trust Co. v. Zink, Prerog., 57 A.2d 372, 376, 380, 141 N.J.Eq. 401.

BLOCKHEAD. A term importing want of natural cleverness, and slowness and obstinacy of mind.

BLOOD. Kindred; consanguinity; family relationship; relation by descent from a common ancestor. Swasey v. Jaques, 144 Mass. 135, 10 N.E. 758, 59 Am.Rep. 65.

A person may be said to be "of the blood" of another who has any, however small a portion, of the blood derived from a common ancestor, Miller v. Grimes, 262 Pa. 226, 105 A. 92, thus including half blood as well as whole blood, Gardner's Estate v. Gardner, 42 Utah, 40, 129 P. 360, 361. All persons are of the blood of an ancestor who may, in the absence of other and nearer heirs, take by descent from that ancestor. Cornell v. Child, 156 N.Y.S. 449, 452, 170 App.Div. 240.

Half-Blood

A term denoting the degree of relationship which exists between those who have the same father or the same mother, but not both parents in common.

Mixed Blood

A person is "of mixed blood" who is descended from ancestors of different races or nationalities; but particularly, in the United States, the term denotes a person one of whose parents (or more remote ancestors) was a negro. U. S. v. First Nat. Bank of Detroit, Minn., 234 U.S. 245, 34 S.Ct. 846, 848, 58 L.Ed. 1298.

Whole Blood

Kinship by descent from the same father and mother; as distinguished from *half* blood, which is the relationship of those who have one parent in common, but not both.

BLOOD FEUD. Avenging the slaughter of kin on the person who slaughtered him, or on his belongings.

Whether the Teutonic or the Anglo-Saxon law had a legal right of blood feud has been disputed, but in Alfred's day it was unlawful to begin a feud until al- attempt had been made to exact the price of the life *(weregild, q. v.).*

BLOOD MONEY. A weregild, or pecuniary mulct paid by a slayer to the relatives of his victim. Also used, in a popular sense, as descriptive of money paid by way of reward for the apprehension and conviction of a person charged with a capital crime.

BLOOD STAINS, TESTS FOR. See Precipitin Test.

BLOODHOUNDS. Dogs remarkable for their sense of smell and ability to follow a scent or track a human being. Pedigo v. Com., 103 Ky. 41, 44 S.W. 143, 42 L.R.A. 432, 82 Am.St.Rep. 566.

It has been held that to permit evidence that a hound has tracked an alleged criminal, it must be shown that it had been trained in that work.

BLOODWIT. An amercement for bloodshed. Cowell. The privilege of taking such amercements. Skene. A privilege or exemption from paying a fine or amercement assessed for bloodshed. Cowell.

BLOODY HAND. In forest law. The having the hands or other parts bloody, which, in a person caught trespassing in the forest against venison, was one of the four kinds of circumstantial evidence of his having killed deer, although he was not found in the act of chasing or hunting. Manwood.

BLOWING WATER. By a ship is throwing water in the hold back and forth and forcing it through crevices in the ceiling and coming in contact with the cargo. The Charles Rohde, D.C.Md., 8 F.2d 506.

BLUDGEON. Part of a boy's baseball bat, the upper end of which had been broken off, has been held to be a bludgeon within a statute relating to the carrying of any concealed instrument. People v. McPherson, 220 N.Y. 123, 115 N.E. 515, 516. Contra as to an iron bar, twenty inches long and three-eighths to one-half inch in diameter. People v. Visarities, 222 N.Y.S. 401, 403, 220 App.Div. 657.

BLUE. As applied to a cow, generally denoting either a modified shade of black, or black with white intermingled, or dark gray, dove, or slate color, which, in contrast with some decided color or with white, suggests and somewhat resembles blue. Graham v. State, 16 Ga.App. 221, 84 S.E. 981, 983.

BLUE LAWS. A supposititious code of severe laws for the regulation of religious and personal conduct in the colonies of Connecticut and New Haven; hence any rigid Sunday laws or religious regulations. The assertion by some writers of the existence of the blue laws has no other basis than the adoption, by the first authorities of the New Haven colony, of the Scriptures as their code of law and government, and their strict application of Mosaic principles. Century Dict.

BLUE NOTES. Notes accepted by a life insurance company for the amount of premiums on the policy, which provide for the continuance of the policy in force until the due date of the notes. Robnett v. Cotton States Life Ins. Co., 148 Ark. 199, 230 S.W. 257, 258.

"Extension notes" in insurance parlance. O'Dell v. American Nat. Ins. Co., Mo.App., 107 S.W.2d 108, 110.

BLUE SKY LAW. A popular name for acts providing for the regulation and supervision of investment companies, for the protection of the community from investing in fraudulent companies. A law intended to stop the sale of stock in fly by night concerns, visionary oil wells, distant gold mines, and other like fraudulent exploitations. Dinsmore v. National Hardwood Co., 234 Mich. 436, 208 N.W. 701.

BLUFF. A high, steep bank, as by a river, the sea, a ravine, or a plain, or a bank or headland with a broad, steep face. Columbia City Land Co. v. Ruhl, 70 Or. 246, 141 P. 208, 210.

BLUMBA. A certifying metal tag attached to kosher meat. People on Complaint of Waller v. Jacob Branfman & Son, 263 N.Y.S. 629, 632, 147 Misc. 290.

BLUNDER.' As applied in cases of ordinary negligence is the want of or absence of ordinary care, a failure to do what should have been done or -the doing of that which should not have been done, resulting in the happening of an event or injury which could have and should have been foreseen and avoided by use of such care as a reasonably prudent person would have exercised under the

same or similar circumstances. Loyd v. Pierce, Tex.Civ.App., 89 S.W.2d 1035, 1038.

BLUNDERBUSS. A firearm intended to shoot objects at close quarters, without exact aim. Moline v. Kotch, 213 Minn. 326, 6 N.W.2d 462.

BOARD. An official or representative body organized to perform a trust or to execute official or representative functions or having the management of a public office or department exercising administrative or governmental functions. Commissioners of State Ins. Fund v. Dinowitz, 39 N.Y. S.2d 34, 38, 179 Misc. 278.

A committee of persons organized under authority of law in order to exercise certain authorities, have oversight or control of certain matters, or discharge certain functions of a magisterial, representative, or fiduciary character. Thus, "board of aldermen," "board of health," "board of directors," "board of works."

Also lodging, food, entertainment, furnished to a guest at an inn or boarding house.

When used with reference to prisoners, as a basis for the sheriff's fee, board may be equivalent to "necessary food." Pacific Coal Co. v. Silver Bow County, 79 Mont. 323, 256 P. 386.

"Board," as a verb, means to receive food for a reasonable compensation, either with or without lodging. In re Doubleday, 159 N.Y.S. 947, 949, 173 App.Div. 739; Wofford v. Hooper, 149 Tenn. 250, 259 S.W. 549.

To "board" a train may mean simply to "enter" it. St. Louis, I. M. & S. Ry. Co. v. Williams, 117 Ark. 329, 175 S. W. 411, 412.

BOARD MEASURE. This term, in a contract of sale of lumber for a specified price per thousand feet, literally implies a measurement of lumber having the dimensions of length, width, and thickness, according to the number of cubic inches; but it may be subject to explanation according to the particular circumstances. Paepcke-Leicht Lumber Co. v. Talley, 106 Ark. 400, 153 S.W. 833, 836.

BOARD OF ALDERMEN. The governing body of a municipal corporation. Oliver v. Jersey City, 63 N.J.Law, 96, 42 A. 782. See Aldermen.

BOARD OF AUDIT. A tribunal provided by statute in some states, to adjust and settle the accounts of municipal corporations. Osterhoudt v. Rigney, 98 N.Y. 222.

BOARD OF CIVIL AUTHORITY. In Vermont, in the case of a city this term includes the mayor and aldermen and justices residing therein; in the case of a town, the selectmen and town clerk and the justices residing therein; in the case of a village, the trustees or bailiffs and the justices residing therein. Vt.St.1894, 19, 59 (G.L. 70).

BOARD OF DIRECTORS. The governing body of a private corporation.

Bank's "board of directors" within statute requiring their consent means all directors. Code 1923, § 3412. McLemore v. State, 26 Ala. App. 228, 157 So. 455, 457.

"Township board" and "board of directors" as interchangeable terms. State ex rel. Kent v. Olenhouse, 324 Mo. 49, 23 S.W.2d 83, 85.

BOARD OF EDUCATION. An agency of the state for government and management of a school district. McCurdy v. Board of Education of City of Bloomington, 359 Ill. 188, 194 N.E. 287. The agency to which state delegates power and duty of controlling schools in school district, Charles B. Saxon, Inc., v. Board of Education of Union Free School Dist. No. 1 of Town of Catskill, 168 Misc. 209, 4 N.Y.S.2d 757. Public municipal corporation, Gustafson v. Wethersfield Tp. High School Dist. 191, 319 I11.App. 255, 49 N.E.2d 311, 312.

BOARD OF EQUALIZATION. See Equalization.

BOARD OF FIRE UNDERWRITERS. Unincorporated voluntary associations composed exclusively of persons engaged in business of fire insurance, for consolidation and co-operation in matters affecting the business. Childs v. Insurance Co., 66 Minn. 393, 69 *N.W.* 141, 35 L.R.A. 99.

BOARD OF HEALTH. A board or commission with certain powers and duties relative to preservation and improvement of the public health. Gaines v. Waters, 64 Ark. 609, 44 S.W. 353. A term descriptive of an official body. Fisher v. Kelly, 289 N.Y. 161, 44 N.E.2d 413, 416. The "Department of Health" of a city having a commissioner of health as its single executive head, was a "Board of Health". Fisher v. Kelly, 264 App. Div. 596, 36 N.Y.S.2d 497, 499.

BOARD OF MEDICAL EXAMINERS. A board exercising certain powers in respect to licensing osteopathic physicians and surgeons. Jordt v. California State Board of Education, 35 Cal.App.2d 591, 96 P.2d 809, 811.

BOARD OF PARDONS. A board to investigate applications for executive clemency and to make reports and recommendations thereon to the governor.

BOARD OF PUBLIC WORKS. Common council of city in taking action respecting street improvements and making assessments. City of Crown Point v. Newcomer, 204 Ind. 589, 185 N.E. 440, 441.

BOARD OF REVIEW. A quasi judicial body to hear evidence tending to show errors in an assessment roll and to decide whether the assessor's valuation is correct. State v. Williams, 160 Wis. 648, 152 N.W. 450, 451.

BOARD OF SPECIAL INQUIRY. An instrument of executive power, made up of subordinates of the commissioner of immigration with administrative duties. Pearson v. Williams, 202 U.S. 281, 26 S.Ct. 608, 50 L.Ed. 1029.

BOARD OF SUPERVISORS. An organized committee, or body of officials, constituting part of the county government, with special charge of the county revenues.

BOARD OF THE TOWN. The board of education of a school district is a "board of the town."

Charles B. Saxon, Inc., v. Board of Education of Union Free School Dist. No. 1 of Town of Catskill, 168 Misc. 209, 4 N.Y.S.2d 757.

BOARD OF TRADE. An organization for the advancement and protection of business interests. Retailers Credit Ass'n of Alameda County v. Commissioner of Internal Revenue, C.C.A.9, 90 F.2d 47, 51, 111 A.L.R. 152. An organization of merchants, manufacturers, etc., of a city, for furthering its commercial interests, advancing its prosperity, etc. In England, an administrative department of government, for the consideration of matters relating to trade and foreign plantations.

BOARD OF WORKS. A board for the better local management of the English metropolis having the care and management of grounds and gardens; the superintendence of drainage; the regulation of street traffic and of the buildings of the metropolis. Brown.

BOARDER. One who makes a special contract for food with or without lodging. Berkshire Woollen Co. v. Proctor, 7 Cush., Mass., 424; One who boards at a boarding house or school. Atlantic City v. Le Beck, 125 N.J.L. 373, 15 A.2d 653, 654. One who has food and lodging for an agreed price, usually under a contract intended to continue for a considerable period of time. Ullman v. State, 1 Tex.App. 220, 28 Am.Rep. 405.

A guest, as distinguished from boarder, comes and remains without any bargain for *time,* and may go away when he pleases. Stewart v. McCready, 24 How.Prac., N.Y., 62; In re Doubleday, 173 App.Div. 739, 159 N.Y.S. 947, 949.

BOARDING HOUSE. A house where the business of keeping boarders generally is carried on, and which is held out by the owner or keeper as a place where boarders are kept; one for the accommodation of those who enter under contract for entertainment at a certain rate for a certain period of time, as for a week or month, at a rate of compensation agreed on; a house kept principally for the residence of permanent boarders. Singelakis v. Davidson, 117 N.J.L. 332, 188 A. 443, 444. A sort of public house, partaking in some degree of the character of an inn or restaurant. Baddour v. City of Long Beach, 279 N.Y. 167, 18 N.E.2d 18, 21, 124 A.L.R. 1003. A *quasi* public house, where boarders are generally and habitually kept, and which is held out and known as a place of entertainment of that kind. Cady v. McDowell, 1 Lans., N.Y. 486; Friedrich Music House v. Harris, 200 Mich. 421, 166 N.W. 869, L.R.A.1918D, 400.

A house occupied for carrying on the business of keeping boarders, although while prosecuting the business and as a means of prosecuting it, the occupant and his wife and children live in the house. Trainor v. Le Beck, 101 N.J.Eq. 823, 139 A. 16, 17. A boarding-house and an inn or hotel differs in, that in a boarding-house the guest is under an express contract, while in an inn there is no express agreement. Willard *v.* Reinhardt, 2 E. D. Smith, N. Y., 148; McIntosh v. Schops, 92 Or. 307, 180 P. 593. An innkeeper is also bound to receive a guest when he presents himself. 2 El. & Bl. 144; McClaugherty *v.* Cline, 128 Tenn. 605, 163 S.W. 801. A "boarding-house" is also less public in characater. State v. Brown, 112 Kan. 814, 212 P. 663, 664, 31 A.L.R. 338. See, also, Talbott v. Southern Seminary, 131 Va. 576, 109 S.E. 440, 19 A.L.R. 534. A "rooming house" differs from a "boarding-house" only in that the latter furnishes *meals.* City of Independence v. Richardson, 117 Kan. 656, 232 P. 1044, 1046. A boarding school, however, is not a boarding-house within a lien statute. Talbott v. Southern Seminary, 131 Va. 576, 109 S.E. 440, 441, 19 A.L.R. 534.

BOARIUS, *adj.* Lat. Relating to neat cattle. See Bovarius.

BOAT. A small open vessel, or water craft, usually moved by oars or rowing.

It is commonly distinguished in law from a ship or vessel, by being of smaller size and without a deck. The Saxon, D.C.S.C., 269 F. 639, 641. But "boat" and "vessel" are often used synonymously. Southern Pac. Co. *v.* Jensen, 244 U.S. 205, 37 S. Ct. 524, 527, 61 L. Ed. 1086, L.R.A. 1918C, 451. And see State v. Hutchins, 79 N.H. 132, 105 A. 519, 521, 2 A.L.R. 1685 ("boats and rafts" held broad enough to cover all water craft, not merely small rowboats). The verb "boat" means to go in a boat. Chappell v. Commercial Casualty Ins. Co., 120 W.Va. 262, 197 S.E. 723, 724.

International rule that sailing vessels shall keep out of way of sailing vessels or boats fishing with nets or lines or trawls does not apply to craft 55 feet long equipped with machinery powerful enought to handle a trawl which would ordinarily be decked over, would have living accommodations for crew, etc. International Rules, art. 26, 33 U.S.C.A. § 111. The Virginia and Joan, C.C.A.Mass., 86 F.2d 259, 261. Seaplanes equipped with pontoons or hulls having hydroplaning surfaces are "hydroplane boats" though provided with wings. Fauber v. United States, Ct. Cl., 37 F.Supp. 415, 435.

BOATABLE. A term applied in some states to minor rivers and streams capable of being navigated in small boats, skiffs, or launches, though not by steam or sailing vessels. New England Trout, etc., Club v. Mather, 68 Vt. 338, 35 A. 323, 33 L.R.A. 569.

A "boatable stream" is one of common passage as a high way. Boutwell v. Champlain Realty Co., 89 Vt. 80, 94 A. 108, 111, Ann.Cas.1918A, 726.

BOATING. Conveyance by a boat, of whatever kind, of persons or freight. Bosworth v. Nelson, 172 Ga. 612, 158 S.E. 306, 307.

BOATSWAIN. A seaman who superintends the work of the crew. South Atlantic S. S. Co. of Delaware v. Munkacsy, Del., 7 W.W.Harr. 580, 187 A. 600, 604. The foreman of sailors. McCauley v. Pacific Atlantic S. S. Co., 167 Or. 80, 115 P.2d 307, 308.

BOB-TAIL DRIVER. A person collecting and delivering laundry without being subject to complete control of employer. Ring v. City Dry Cleaners, Fla., 152 Fla. 622, 12 So.2d 593, 594.

BOBTAILED CABOOSE. One with a door in the front end and without any platform. St. Louis Southwestern Ry. Co. of Texas v. Johnson, Tex. Civ.App., 249 S.W. 1092.

BOBTAILS. Persons who conduct stores or establishments of their own where patrons may bring articles to be laundered. Schwartz v. Laundry & Linen Supply Drivers' Union, Local 187, 339 Pa. 353, 14 A.2d 438, 439.

BOC. In Saxon law. A book or writing; a deed or charter. *Boc land,* deed or charter land. *Land boc,* a writing for conveying land; a deed or charter; a land-book. The *land-bocs,* or evidences of

title, corresponding to modern deeds, were destroyed by William the Conqueror.

BOC HORDE. A place where books, writings, or evidences were kept, generally in monasteries. Cowell.

BOC LAND. In Saxon law. Allodial lands held by deed or other written evidence of title.

BOCERAS. Sax. A scribe, notary, or chancellor among the Saxons.

BODILY. Pertaining to or concerning the body; of or belonging to the body or the physical constitution; not mental but corporeal. Electric R. Co. v. Lauer, 21 Ind.App. 466, 52 N.E. 703; Provident Life & Accident Ins. Co. v. Campbell, 18 Tenn. App. 452, 79 S.W.2d 296.

Under a health insurance policy the words "bodily disease or illness" have been held to embrace insanity. American Nat. Ins. Co. v. Denman, Tex.Civ.App., 260 S.W. 226, 227; Syphilis and insanity caused by syphilis. Magill v. Travelers Ins. Co., C.C.A.Mo., 133 F.2d 709, 712.

### Bodily Harm

Any touching of the person of another against his will with physical force, in an intentional, hostile, and aggressive manner, or a projecting of such force against his person. People v. Moore, 50 Hun, 356, 3 N.Y.Supp. 159. Any impairment of physical condition of another's body or physical pain or illness, but does not include minute disturbance of nerve centers caused by fear, shock or other emotions. Clark v. Associated Retail Creditmen of Washington, 70 App.D.C. 183, 105 F.2d 62, 64.

### Bodily Heirs

Heirs begotten or borne by the person referred to; lineal descendants. Turner v. Hause, 199 Ill. 464, 65 N.E. 445; Righter v. Forrester, 1 Bush, Ky., 278.

Progeny or issue, Including children, grandchildren, and other lineal descendants. Matthews v. Matthews, 214 N.C. 204, 198 S.E. 663, 665. Children synonymous. Murdock v. Deal, 208 N.C. 754, 182 S.E. 466. Heirs of body synonymous, Williamson v. Cox, 218 N.C. 177, 10 S.E.2d 662, 666. Adopted child as included in words "bodily heirs", Leeper v. Leeper, 347 Mo. 442, 147 S.W.2d 660, 663, 133 A.L.R. 586. Words of limitation, Kinnaird v. Farmers' & Merchants' Bank, 249 Ky. 661, 61 S.W.2d 291.

### Bodily Infirmity

A settled disease or ailment that would probably result to some degree in general impairment of physical health and vigor. Travelers' Ins. Co. of Hartford, Conn., v. Byers, 123 Cal.App. 473, 11 P.2d 444, 446; Ross v. First American Ins. Co., 125 Neb. 329, 250 N.W. 75, 79. An ailment or disorder of an established and settled character. Maremont v. Lawyers Mut. Ben. Ass'n, 294 Ill. App. 605, 13 N.E.2d 849; Ross v. First American Ins. Co., 125 Neb. 329, 250 N.W. 75, 79; something that amounts to inroad on physical health or impairment of bodily or mental powers. McClure v. World Ins. Co., 126 Neb. 676, 254 N.W. 393; Gyulai v. Prudential Ins. Co. of America, 135 Pa. Super. 73, 4 A.2d 824, 826.

### Bodily Injury

Any physical or corporeal injury; not necessarily restricted to injury to the trunk or main part of the body as distinguished from the head or limbs. State Life Ins. Co. v. Allison, C.C.A.Ala., 269 F. 93, 94, 14 A.L.R. 412; Ross v. International Travelers Ass'n, Tex.Civ.App., 283 S.W. 621. A physical injury only. United States Fidelity & Guaranty Co. v. Shrigley, D.C.Ark., 26 F.Supp. 625, 628. A cut, bruise, or wound. Chase v. Business Men's Assur. Co. of America, C.C.A.Utah, 51 F.2d 34, 36. A localized abnormal condition of the living body. King v. Travelers Ins. Co., 123 Conn. 1, 192 A. 311. An injury caused by external violence. P.rannaker v. Prudential Ins. Co. of America, 236 Mo.App. 239, 150 S.W.2d 498, 502. Burns v. Employers' Liability Assur. Corporation, Limited, of London, England, 134 Ohio St. 222, 16 N.E.2d 316, 321, 117 A.L.R. 733.

"Bodily injuries" and "personal injuries" are not synonymous. • Malone v. Costa, 151 Fla. 144, 9 So.2d 275, 277. "Bodily injury" and "personal injury" may be used as equivalent terms. Cormier v. Hudson, 284 Mass. 231, 187 N.E. 625, 626. American Fidelity & Casualty Co. v. Mahon, 170 Md. 573, 185 A. 330, 332, 105 A.L.R. 1200.

### Bodily Member

An ear is not embraced in the term "member". Lumbermens Mut. Casualty Co. v. Cook, 69 Ga. App. 131, 25 S.E.2d 67, 71.

### Great Bodily Harm

An injury of a greater and more serious kind than battery. Shires v. Boggess, 72 W.Va. 109, 77 S.E. 542, 545. Equivalent to "maim." State v. Foster, 281 Mo. 618, 220 S.W. 958, 959.

### Great Bodily Injury

An injury of a more grave and serious character than an ordinary battery, but one which cannot be definitely defined. State v. Ockij, 165 Iowa, 237, 145 N.W. 486, 487; Hallett v. State, 109 Neb. 311, 190 N.W. 862, 863,

BODMERIE, BODEMERIE, BODDEMEREY. Belg. and Germ. Bottomry ( *q. v.).*

BODY. A person. Used of a natural body, or of an artificial one created by law, as a corporation.

The main part of the human body; the trunk. Walker v. State, 34 Fla. 167, 16 So. 80, 43 Am.St. Rep. 186. The term may, however, embrace all members of the person, Louisville Ry. Co. v. Veith, 157 Ky. 424, 163 S.W. 217; including the head, Franklin v. State, 33 Ohio Cir.Ct.R. 21, 22.

Also the main part of an instrument; in deeds it is spoken of as distinguished from the recitals and other introductory parts and signatures; in *affidavits,* from the title and jurat.

A collection of laws; that is, the embodiment of the laws in one connected statement or collection, called a "body of laws" ( *q. v.).*

A cement mixer assembled on a truck, Consolidated Rock Products Co. v. Carter, 54 Cal.App.2d 519, 129 P.2d

455, 457. The Workmen's Benefit Fund of the United States of America. In re Workmen's Benefit Fund of United States, 38 N.Y.S.2d 429, 431, 265 App.Div. 176.

BODY CORPORATE. A corporation public or private.

School districts, Commonwealth v. School Dist. of Pittsburgh, Allegheny County, 343 Pa. 394, 23 A.2d 496. State Building Commission, Utah State Building Commission, for Use and Benefit of Mountain States Supply Co., v. Great American Indemnity Co., 105 Utah 11, 140 P.2d 763, 767.

BODY EXECUTION. An "execution" for confinement of defendant, Hershey v. People, 91 Colo. 113, 12 P.2d 345, 347.

A "body execution" is an "execution" which directs that, in accordance with the provisions therein set forth, the body of the defendant therein named be committed to jail. Ex parte Thompson, 111 Vt. 7, 9 A.2d 107, 110.

BODY HEIRS. Sometimes words of purchase. Brown v. Boone, 129 Kan. 786, 284 P. 436, 437.

BODY OF A COUNTY. A county at large, as distinguished from any particular place within it. A county considered as a territorial whole. State v. Arthur, 39 Iowa, 632; People v. Dunn, 31 App. Div. 139, 52 N.Y.Supp. 968.

BODY OF AN INSTRUMENT. The main and operative part; the substantive provisions, as distinguished from the recitals, title, jurat, etc.

BODY OF LAWS. An organized and systematic collection of rules of jurisprudence.

BODY OF THE OFFENSE. When applied to any particular offense, means that the particular crime charged has actually been committed by some one. Barrett v. State, 57 Okl. 259, 47 P.2d 613, 617.

BODY POLITIC OR CORPORATE. A social compact by which the whole people covenants with each citizen, and each citizen with the whole people, that all shall be governed by certain laws for the common good, Uricich v. Kolesar, 54 Ohio App. 309, 7 N.E.2d 413, 414. A term applied to a corporation. County. Bazzoli v. Larson, 40 Ohio App. 321, 178 N.E. 331, 332; Lindburg v. Bennett, 117 Neb. 66, 219 N.W. 851, 855. Municipality. Middle-States Utilities Co. v. City of Osceola, 1 N.W.2d 643, 645, 231 Iowa 462; Lindburg v. Bennett, 117 Neb. 66, 219 N.W. 851, 855. School district. Patrick v. Maybank, 198 S.C. 262, 17 S.E.2d 530, 534.

State or nation or public associations, Utah State Building Commission, for Use and Benefit of Mountain States Supply Co., v. Great American Indemnity Co., 105 Utah 11, 140 P.2d 763, 767.

BOILARY. Water arising from a salt well belonging to a person who is not the owner of the soil.

BOILER. Insurance policies defining a boiler as a receptacle in which steam is generated, including the stop valve nearest the boiler, have been held not to include a nipple screwed into the outlet of the stop valve, Cambria Coal Mining Co. v. Travelers' Indemnity Co., 144 Tenn. 469, 234 S.W. 323, 324, nor the whistle pipe above the whistle valve, Norfolk & W. Ry. Co. v. Royal Indemnity Co., D.C.Pa., 257 F. 849, 850; nor damage by gas explosion in fire box and chimney, Hartford Steam Boiler Inspection & Insurance Co. v. Kleinman, Tex.Civ.App., 293 S.W. 894, 895.

Under the Boiler Inspection Act Feb. 17, 1911, § 2, 45 U.S.C.A. § 23, a locomotive cab is an appurtenance to the boiler, Brown v. Lehigh Valley R. Co., 108 Misc. 384, 177 N.Y.S. 618, 619; and a bell ringer is a part or appurtenance of a locomotive and tender, Hines v. Smith, C.C.A.Ill., 275 F. 766, 767; but not a so-called trail car similar to a flat car, used exclusively in switching cars or trains onto a transfer boat, for the purpose of preventing the great weight of the locomotive from being placed on the apron or approaches of the transfer boat, Alabama & V. Ry. Co. v. Ware, 129 Miss. 315, 92 So. 161, 162.

BOILS. A policy, providing for the payment of indemnity in the event the insured suffered from "boils," is clear and explicit, and does not cover disability occasioned by a disease designated as "ischio-rectal abscess." Midland Casualty Co. v. Mason, 55 Okl. 93, 154 P. 1171, 1172. A localized inflammatory swelling of the skin. Beck v. State, 29 Ala.App. 410, 197 So. 42, 43.

BOIS, or BOYS. L. Fr. Wood; timber; brush.

BOLHAGIUM, or BOLDAGIUM. A little house or cottage. Blount.

BOLT. The desertion by one or more persons from the political party to which he or they belong; the permanent withdrawal before adjournment of a portion of the delegates to a political convention. Rap. & L.

A mass or block of wood from which anything may be cut or formed. St. Louis, I. M. & S. R. Co. v. J. F. Hasty & Sons, 255 U.S. 252, 41 S.Ct. 269, 270, 65 L.Ed. 614.

BOLTING. In English practice. A term formerly used in the English inns of court, but more particularly at Gray's Inn, signifying the private arguing of cases, as distinguished from *mooting,* which was a more formal and public mode of argument. Cowell; Tomlins; Holthouse.

BOMBAY REGULATIONS. Regulations passed for the presidency of Bombay, and the territories subordinate thereto. They were passed by the governors in council of Bombay until the year 1834, when the power of local legislation ceased, and the acts relating thereto were thenceforth passed by the governor general of India in council. Mozley & Whitley.

BON, Fr. In old French law, a royal order or check on the treasury, invented by Francis I. *Bon pour mule livres,* good for a thousand livres. Step.Lect. 387.

In modern law. The name of a clause (bon *pour* _____, good for so much) added to a cedule or promise, where it is not in the handwriting of

the signer, containing the amount of the sum which he obliges himself to pay. Poth.Obl. part 4, ch. 1, art. 2, § 1.

BONA. Lat. n. Goods; property; possessions. In the Roman law, this term was used to designate all species of property, real, personal, and mixed, but was more strictly applied to real estate. In modern civil law, it includes both personal property (technically so calledl and chattels real, thus corresponding to the French *biens (q. v.).* In the common law, its use was confined to the description of movable goods. Tisdale v. Harris, 20 Pick. (Mass.) 13.

*Bona Confiscata*

Goods confiscated or forfeited to the imperial *fist* or treasury. 1 Bl.Comm. 299.

*Bona et Catalla*

Goods and chattles. Movable property. This expression includes all personal things that belong to a man. 16 Mees. & W. 68.

*Bona Felonum*

In English law. Goods of felons; the goods of one convicted of felony. 5 Coke, 110.

*Bona Forisfacta*

Goods forfeited.

*Bona Fugitivorum.*

In English law. Goods of fugitives; the proper goods of him who flies for felony. 5 Coke, 109b.

*Bona Immobilia*

Lands. Castle v. Castle,,C.C.A.Haw., 267 F. 521, 522.

*Bona Mobilia*

In the civil law. Movables. Castle v. Castle, C.C.A. Haw., 267 F. 521, 522. Those things which move themselves or can be transported from one place to another, and not permanently attached to a farm, heritage, or building.

*Bona Notabilia*

Notable goods; property worthy. of notice, or of sufficient value to be accounted for. 2 Bl.Comm. 509; Rolle, Abr. 908. Moore v. Jordan, 36 Kan. 271, 13 P. 337, 59 Am. Rep. 550.

*Bona Paraphernalia*

In the civil law. The separate property of a married woman other than that which is included in her dowry; more particularly, her clothing, jewels, and ornaments. Whiton v. Snyder, 88 N.Y. 303.

*Bona Peritura*

Goods of a perishable nature; such goods as an executor or trustee must use diligence in disposing of and converting them into money.

*Bona Utlagatorum*

Goods of outlaws; goods belonging to persons outlawed.

*Bona Vacantia*

Vacant, unclaimed, or stray goods. Those things in which nobody claims a property, and which belonged, under the common law, to the finder, except in certain instances, when they were the property of the king. 1 Bl.Comm. 298.

*Bona Waviata*

In English law. Waived goods; goods stolen and *waived,* that is, thrown away by the thief in his flight, for fear of being apprehended, or to facilitate his escape; and which go to the sovereign. 5 Coke, 109b; 1 Bl.Comm. 296.

BONA. Lat. *adj.* Good. Used in numerous legal phrases of which the following are the principal:

*Bona Fides*

Good faith; integrity of dealing; honesty; sincerity; the opposite of *mala fides* and of *dolus* males,

*Bona Gestura*

Good abearance or behavior.

*Bona Gratia*

In the Roman law. By mutual consent; voluntarily. A. term applied to a species of divorce where the parties separated by mutual consent; or where the parties renounced their marital engagements without assigning any cause, or upon mere pretexts. Tayl. Civil Law, 361 362; Calvin.

*Bona Memoria*

Good memory. Generally used in the phrase *sance mentis et bonce memorice,* of sound mind and good memory, as descriptive of the mental capacity of a testator.

*Bona Patria*

In the Scotch law. An assize or jury of good neighbors. Bell.

BONA FIDE. Is or with good faith; honestly, openly, and sincerely; without deceit or fraud. M. Lowenstein & Sons v. British-American Mfg. Co., C.C.A.Conn., 7 F.2d 51, 53; Fairfield Holding Corporation v. Souther, 258 Mass. 540, 155 N.E. 639, 640. Truly; actually; without simulation or pretense. Innocently; in the attitude of trust and confidence; without notice of fraud, etc. Real, actual, genuine, and not feigned. Bridgeport Mortgage & Realty Corporation v. Whitlock, 128 Conn. 57, 20 A.2d 414, 416.

The phrase *"bona fide"* is sometimes used ambiguously; thus, the expression *"bona fide* holder for value" (see that title, *infra)* may either mean a holder for real value, *as* opposed to a holder for pretended value, or it may mean a holder for reaL,value without notice of any fraud, etc. Byles, Bills, 121.

*Bona Fide Contract Carriers*

Genuine contract carriers without deceit or fraud. Infantino v. Pennsylvania Public Utility Commission, 146 Pa.Super. 245, 22 A.2d 108, 109; Puhl v. Pennsylvania Public Utility Commission, 139 Pa.Super. 152, 11 A.2d 508, 511.

*Bona Fide Holder for Value*

An innocent or "bona fide holder for value" of negotiable paper is one who has taken it in good faith for a valuable consideration in the ordinary course of business and when it was not overdue. McCamant v. McCamant, Tex.Civ.App., 187 S.W. 1096, 1099. "Holder in due course" as equivalent for expression "bona fide holder for value without notice." Drumm Const. Co. v. Forbes, 305 Ill. 303, 137 N.E. 225, 226, 26 A.L.R. 764; Bank of California v. National City Co., 138 Wash. 517, 244 P. 690, 691; Bruce v. Citizens' Nat. Bank of Lineville, 185 Ala. 221, 64 So. 82, 84; Weller v. Meadows, Mo.App., 272 S.W. 85, 90. One who receives negotiable paper in payment of antecedent obligations without notice of prior equities. W. Horace Williams Co. v. Vandaveer, Brown & Stoy, Tex.Civ.App., 84 S.W.2d 333, 340.

*Bona Fide Judgment Creditor*

One who in good faith, without fraud or collusion, recovers a judgment for money honestly due him. Rochester Trust Co. v. White, 243 Pa. 469, 90 A. 127, 129.

*Bona Fide Mortgagee*

Essential elements of status are good faith, valuable consideration, and absence of notice. Companaro v. Gondolfo, C.C.A.N.J., 60 F.2d 451, 452. To constitute "bona fide mortgagee" there must be an absence of notice and payment of, or fixed liability for the consideration. Cambridge Production Credit Ass'n v. Patrick, 140 Ohio St. 521, 45 N.E.2d 751, 755, 144 A.L.R. 323.

*Bona Fide Operation*

Substantial, as distinguished from incidental, sporadic, or infrequent service. Goncz v. Interstate Commerce Commission, D.C.Mass., 48 F.Supp. 286, 288.

*Bona Fide Possessor*

One who not only supposes himself to be the true proprietor of the land, but who is ignorant that his title is contested by some other person claiming a better right to It. Whitehead v. Barker, 288 Mich. 19, 284 N.W. 629, 631.

*Bona Fide Possessor Facit Fructus Consumptos Suos*

By good faith a possessor makes the fruits consumed his own. Tray. Lat. Max. 57.

*Bona Fide Purchaser*

A purchaser in good faith for valuable consideration and without notice. Neal v. Holt, Tex.Civ.App., 69 S.W.2d 603, 609. A purchaser for a valuable consideration paid or parted with in the belief that the vendor had a right to sell, and without any suspicious circumstances to put him on inquiry. Merritt v. Railroad Co., 12 Barb., N. Y., 605. One who acts without covin, fraud, or collusion; one who, in the commission of or connivance at no fraud, pays full price for the property, and in good faith, honestly, and in fair dealing buys and goes into possession. Sanders v. McAffee, 42 Ga. 250. One who at time of purchase advances a new consideration, surrenders some security, or does some other act which leaves him in a worse position if his purchase should be set aside. Kelly v. Grainey, 113 Mont. 520, 129 P.2d 619, 626. Title, possession, and want of notice, either actual or constructive, as the essential factors. Taylor *v.* Lindenmann, 211 Iowa, 1122, 235 N.W. 310, 312. Payment of consideration prior to notice of adverse claim as essential. The J. Oswald Boyd, D.C.Mich., 53 F.Supp. 103, 106. Payment of valuable consideration, good faith, absence of purpose to take unfair advantage of third persons, and absence of actual or constructive notice of outstanding rights of others as the essential elements. Luschen v. Stanton, 192 Okl. 454, 137 P.2d 567, 570. "Innocent purchaser for value" and "bona fide purchaser" as synonymous. Felts v. Whitaker, Tex. Civ.App., 129 S.W.2d 682, 690.

*Bona Fide Residence*

Residence with domiciliary intent, i. e., a home In which the party actually lives. Alburger v. Alburger, 138 Pa. Super. 339, 10 A.2d 888, 890.

BONA FIDES EXIGIT UT QUOD CONVENIT FIAT. Good faith demands that what is agreed upon shall be done. Dig. 19, 20, 21; Id. 19, 1, 50; Id. 50, 8, 2, 13.

BONZE FIDEI NON CONGRUIT DE APICIBUS JURIS DISPUTARE. It is unbecoming to (or incompatible with) good faith to discuss (insist upon) the extreme subtleties of the law. A maxim which may be more freely rendered as meaning, "To insist on extreme subtleties of law is an encouragement to fraud." Adams. Gloss.

BONA FIDES NON PATITUR UT BIS IDEM EXIGATUR. Good faith does not allow us to demand twice the payment of the same thing. Dig. 50, 17, 57; Broom, Max. 338, note; Perine v. Dunn, 4 Johns.Ch., N.Y., 143.

BONZE FIDEI. In the civil law. Of good faith; it good faith.

BONZE FIDEI CONTRACTS. In civil and Scotch law. Those contracts in which equity may interpose to correct inequalities, and to adjust all matters according to the plain intention of the parties. 1 Karnes, Eq. 200.

BONZE FIDEI EMPTOR. A purchaser in good faith. One who either was ignorant that the thing he bought belonged to another or supposed that the seller had a right to sell it. Dig. 50, 16, 109. See Id. 6, 2, 7, 11.

BONZE FIDEI POSSESSOR. A possessor in good faith. One who believes that no other person has a better right to the possession than himself. Mackeld.Rom.Law, § 243.

BONZE FIDEL POSSESSOR IN ID TANTUM QUOD SESE PERVENERIT TENETUR. A possessor in good faith is liable only for that which he himself has obtained (or that which has come to him). 2 Inst. 285.

BONANZA. Enormous profit for miner in placer mine. Ballagh v. Williams, 50 Cal.App.2d 10, 122 P.2d 343, 344.

BOND. A certificate or evidence of a debt. State v. Merchants Nat. Bank of Mobile, 230 Ala. 661, 162 So. 270; First State Bank of Kansas City v. Bone, 122 Kan. 493, 252 P. 250, 254. A contract. Cusack v. McGrain, 136 Ohio St. 27, 23 N.E.2d 633, 635. A debt on which interest is paid. Commissioner of Internal Revenue v. H. P. Hood & Sons, C.C.A.1, 141 F.2d 467, 469. A deed whereby the obligor obliges himself, his heirs, executors and administrators, to pay a certain sum of money to another at a day appointed. Gural v. Engle, 128 N.J.L. 252, 25 A.2d 257, 260; Commonwealth, for Use of Fayette County v. Perry, 330 Pa. 355, 199 A. 204, 206. A mere promise to pay. Deppe v. Lufkin, C.C.A.Mass., 116 F.2d 483, 486. A specialty or sealed instrument and not merely a written instrument. Forrest v. Hawkins, 169 Va. 470, 194 S.E. 721, 722. A written obligation. Davis v. Phipps, 191 Ark. 298, 85 S.W.2d 1020, 1023, 100 A.L.R. 1110; Covington Virginian v. Woods, 182 Va. 538, 29 S.E.2d 406; Code Miss.1930, § 1365. An instrument which is not necessarily under seal. Carson, Pirie, Scott & Co. v. Duffy-Powers, Inc., D.C.N.Y., 9 F.Supp. 199, 201; Code Miss.1930, § 1365. An instrument with a clause, with a sum fixed as a penalty, binding the parties to pay the same, conditioned, however, that the payment of the penalty may be avoided by the performance by some one or more of the parties of certain acts. In re Fitch, 3 Redf.Sur., N.Y., 459. And see Stifel Estate Co. v. Cella, 220 Mo.App. 657, 291 S.W. 515, 518. Any contractual funding device. Leon County v. State, 122 Fla. 505, 165 So. 666. Debentures. First State Bank of Kansas City v. Bone, 122 Kan. 493, 252 P. 250, 254. Obligation to pay interest embodied in bonds as included in word "bonds." Eisiminger v. Elliott, Colo., 103 Colo. 216, 84 P.2d 823, 825.

In old Scotch law. A bond-man; a slave. Skene.

Bonds are either single (simple) or double, (conditional.) A *single* bond *is* one in which the obligor binds himself, his heirs, etc., to pay a certain sum of money to another person at a specified day. A *double* (or conditional) bond is one to which a condition is added that if the obligor does or forbears from doing some act the obligation shall be void. Formerly such a condition was sometimes contained in a separate instrument, and was then called a "defeasance."

Word "bond" in a statute means negotiable bonds. Royal Oak Drain. Dist., Oakland County v. Keefe, C.C.A. Ohio, 87 F.2d 786. Word "bons" in statute held applicable to a single bond. Lien Law N.Y. § 231. In re Downtown Athletic Club of New York City, D.C.N.Y., 18 F.Supp. 712, 715.

As a verb, to place under the cohditions of a bond; specif. : to convert into a debt secured by bonds. State ex rel. Pittman Bros. Const. Co. v. Watson, 199 La. 623, 6 So.2d 709, 712. To give bond for, as for duties on goods; to secure payment of duties, by giving bond. *Bonded,* secured by bond. Bonded goods are those for the duties on which bonds are given.

*Bond and Disposition* in *Security*

In Scotch law. A bond and mortgage on land.

*Bond and Mortgage*

A species of security, consisting of a bond conditioned for the repayment of a loan of money, and a mortgage of realty to secure the performance of the stipulations of the bond. Meigs v. Bunting, 141 Pa. 233, 21 A. 588, 23 Am.St. Rep. 273.

A bond and mortgage are distinct and separate securities. In re Maroney's Estate, 311 Pa. 336, 166 A. 914, 915. "Bond" is primarily contract to pay while "mortgage" is separate contract to secure payment. Mendelson v. Realty Mortg. Corporation, 257 Mich. 442, 241 N.W. 154, 155.

Investment in certificates of participation in bonds and mortgages as within statute authorizing investment in "bonds and mortgages". In re Smith, 279 N.Y. 479, 18 N.E.2d 666, 670.

*Bond Creditor*

A creditor whose debt is secured by a bond.

*Bond for Deed*

An agreement to make title in the future or an executory or incomplete sale. Ingram v. Smith, 62 Ga.App. 335, 7 S.E.2d 922, 926. An agreement to buy and sell real estate on small monthly payments. Galverina v. Ben L. Lewis Corporation, La.App., 165 So. 29.

Bond *for Title*

An agreement to make title in the future or an executory or incomplete sale. Ingram v. Smith, 62 Ga.App. 335, 7 S.E.2d 922, 926. White v. Stokes, 67 Ark. 184, 53 S.W. 1060. In re Phcenix Planing Mill, D.C.Ga., 250 F. 899, 903. It is not a conveyance of legal title but only a contract t,') convey and may ripen into an equitable title upon payment of the consideration. Faddell v. Taylor, Tex.Com.App., 239 S.W. 931, 932.

*Bond Issue*

Delivery of instruments as covered by term. Vans Agnew v. Fort Myers Drainage Dist., C.C.A.Fla., 69 F.2d 244, 245.

*Bond of Indebtedness*

Instruments containing promise to pay sum certain under seal and issued in series in nature of corporate securities. Bellefield Co. v. Heiner, D.C.Pa., 26 F.2d 292, 293. A temporary bond in registered form issued by public service corporation. Wisconsin Public Service Corporation v. United States, D.C.Wis., 40 F.Supp. 327, 330.

*Bond of Such Ordinary*

Bond that the ordinary gives for the faithful performance of duties as clerk. Jones v. Reed, 58 Ga.App. 72, 197 S.E. 665, 668.

*Bond Tenants*

In English law. Copyholders and customary tenants are sometimes so called. 2 Bi.Comm. 148.

*Bond with Surety*

Bond executed without surety but accompanied by certified check as substitute. Clinch Valley Lumber Corporation v. Hagan Estates, Inc., 167 Va. 1, 187 S.E. 440, 441.

*Bonds* of State or *Public Corporation*

State's or city's general obligation bonds. City of Los Angeles v. Agardy, 1 Ca1.2d 76, 33 P.2d 834, 835.

*Claim Bond*

Primarily in nature of forthcoming bond. Sanders v. Farrier, Tex.Civ.App., 271 S.W.2d 293, 298.

*Corporate Bonds*

See Corporate Bonds.

*Forthcoming Bond*

A bond conditioned that a certain article shall be forthcoming at a certain time or when called for. See Claim bond.

*General Mortgage Bond*

A bond secured upon an entire corporate property, parts of which are subject to one or more prior mortgages.

*Heritable Bond*

In Scotch law, a bond for a sum of money to which is joined a conveyance of land or of heritage, to be held by the creditor in security of the debt.

*Income Bonds*

Bonds on which interest is payable only when earned and after payment of interest upon prior mortgages.

*Indemnity Bond*

See Indemnity Bond.

*Liability Bond*

One which is intended to protect the assured from liability for damages or to protect the persons damaged by injuries occasioned by the assured as specified, when such liability should accrue, and be imposed by law, as by a court, as distinguished from an indemnity bond, whose purpose is only to indemnify the assured against actual loss by way of reimbursement for moneys paid or which must be paid. Fenton v. Poston, 114 Wash. 217, 195 P. 31, 33.

*Lloyd's Bond*

A bond issued for work done or goods delivered and bearing interest.

*Municipal Bond*

See Municipal bonds.

*Official Bond*

A bond given by a public officer, conditioned that he shall well and faithfully perform all the duties of the office. The term is sometimes made to include the bonds of executors, guardians, trustees, etc.

*Railroad Aid Bonds*

Bonds issued by municipal corporations to aid in the construction of railways.

*Redelivery* Bond

A statutory bond given by a person in whose possession attached property is found in order to regain possession of the property. Burnham-Munger-Root Dry Goods Co. v. Strahl, 102 Neb. 142, 166 N.W. 266.

*Simple Bond*

At common law, a bond without penalty; a bond for the payment of a definite sum of money to a named obligee on demand or on a day certain. Burnside v. Wand, 170 Mo. 531, 71 S.W. 337, 62 L.R.A. 427.

*Single Bond*

A deed whereby the obligor obliges himself, his heirs, executors, and administrators, to pay a certain sum of money to the obligee at a day named, without terms of defeasance.

*Straw Bond*

A bond upon which is used either the names of fictitious persons or those unable to pay the sum guaranteed; generally applied to insufficient bail bonds, improperly taken.

BONDAGE. Slavery; involuntary personal servitude; captivity. In old English law, villenage, villein tenure. 2 B1.Comm. 92.

BONDED INDEBTEDNESS. Indebtedness lawfully contracted for corporate purposes, payable from taxes on all property within municipality. Bolton v. Wharton, 163 S.C. 242, 161 S.E. 454, 460.

BONDED WAREHOUSE. See Warehouse System.

BONDSMAN. A surety; one who has entered into a bond as surety. The word seems to apply especially to the sureties upon the bonds of officers, trustees, etc., while *bail* should be reserved for the sureties on recognizances and bail-bonds. Haberstich v. Elliott, 189 Ill. 70, 59 N.E. 557.

BONES GENTS. L. Fr. In old English law. Good men (of the jury).

BONI HOMINES. In old European law. Good men; a name given in early European jurisprudence to the tenants of the lord, who judged each other in the lord's courts. 3 Bl.Comm. 349.

BONI JUDICIS EST AMPLIARE JURISDICTIONEM. It is the part of a good judge to enlarge (or use liberally) his remedial authority or jurisdiction. 1 C.B.N.S. 255; 4 Bingh.N.C. 233; 4 Scott N.R. 229.

BONI JUDICIS EST AMPLIARE JUSTITIAM. It is the duty of a good judge to enlarge or extend justice. 1 Burr. 304.

BONI JUDICIS EST JUDICIUM SINE DILATIONE MANDARE EXECUTIONI. It is the duty of a good judge to cause judgment to be executed without delay. Co.Litt. 289.

BONI JUDICIS EST LITES DIRIMERE, NE LIS EX LITE ORITUR, ET INTEREST REIPUBLICIFI UT SINT FINES LITIUM. It is the duty of a good judge to prevent litigations, that suit may not grow out of suit, and it c4ncerns the welfare of a state that an end be put to litigation. 4 Coke, 15b; 5 Coke, 31a.

BONIFICATION. The remission of a tax, particularly on goods intended for export, having the same effect as a bonus or drawback. A device enabling a commodity to be exported and sold in the foreign market as if it had not been taxed. U. S. v. Passavant, 169 U.S. 16, 18 S.Ct. 219, 42 L. Ed. 644.

BONIS CEDERE. In the civil law. To make a transfer or surrender of property, as a debtor did to his creditors. Cod. 7, 71.

BONIS NON AMOVENDIS. A writ addressed to the sheriff, when a writ of error has been brought, commanding that the person against whom judgment has been obtained be not suffered to remove his goods till the error be tried and determined. Reg. Orig. 131.

BONITARIAN OWNERSHIP. In Roman law. A species of equitable title to things, as distinguished from a title acquired according to the strict forms of the municipal law; the property of a Roman citizen in a subject capable of quiritary property, acquired by a title not known to the civil law, but introduced by the praetor, and protected by his *imperium* or supreme executive power, *e. g.,* where *res mancipi* had been transferred by mere tradition. Poste's Gaius Inst. 187. See Quiritarian Ownership.

BONO ET MALO. A special writ of jail delivery, which formerly issued of course for each particular prisoner. 4 Bl.Comm. 270.

BONUM DEFENDENTIS EX INTEGRA CAUSA; MALUM EX QUOLIBET DEFECTU. The success of a defendant depends on a perfect case; his loss arises from some defect. 11 Coke, 68a.

BONUM NECESSARIUM EXTRA TERMINOS NECESSITATIS NON EST BONUM. A good thing required by necessity is not good beyond the limits of such necessity. Hob. 144.

BONUS. A consideration or premium paid by a company for a charter or other franchise or privilege. Com. v. Transp. Co., 107 Pa. 112; for privilege of carrying on corporate business, United Gas Improvement Co. v. Burnet, C.C.A.3, 64 F.2d 957, 958. A consideration for what is received, and advantage or benefit given in return for a benefit received, or an inducement for conferring a benefit. Church v. Winship, 175 La. 816, 144 So. 585, 586. "A definite sum to be paid at one time, for a loan of money for a specified period, distinct from and independently of the interest." Association v. Wilcox, 24 Conn. 147. A gratuity to which the recipient has no right to make a demand. Walling v. Plymouth Mfg. Corporation, C.C.A.Ind., 139 F.2d 178, 182. A premium or extra or irregular remuneration in consideration of offices performed or to encourage their performance. Willkie v. Commissioner of Internal Revenue, C.C.A.6, 127 F.2d 953, 956. A premium paid to a grantor or vendor. An advance royalty. Sneed v. Commissioner of Internal Revenue, C.C.A.Tex., 119 F.2d 767, 770. An "arbitrary award" given without reference to qualifications for position. Thomas v. Kern, 280 N.Y. 236, 20 N.E.2d 738, 740. 'An extra consideration given for what is received, or something given in addition to what is ordinarily received by, or strictly due, the recipient. La Juett v. Coty Mach. Co., 153 Misc. 410, 275 N.Y.S. 822. An increase in salary or wages in contracts of employment. Attorney General v. City of Woburn, 317 Mass. 465, 58 N.E.2d 746, 747. An offer to employees to procure efficient and faithful service. Roberts v. Mays Mills, 184 N.C. 406, 114 S.E. 530, 532, 28 A. L.R. 338; Duffy Bros. v. Bing & Bing, 217 App. Div. 10, 215 N.Y.S. 755, 758. Any premium or advantage. Consideration or down payment for mineral lease or transfer of oil lands. State Nat. Bank of Corpus Christi v. Morgan, Tex.Civ.App., 123 S.W.2d 1036, 1038; In re Levy, 185 Okl. 477, 94 P.2d 537, 539; Gift in recognition of officer's past successful direction of corporate affairs. Thomas v. Commissioner of Internal Revenue, C.C.A.La., 135 F.2d 378, 379. "Interest" for the purpose of 'the usury law. Bowen v. Mt. Vernon Sa[y]. Bank, 70 App.D.C. 273, 105 F.2d 796, 797.

The word "bonus" may in its natural import imply a gift or gratuity. Carson v. Olcott, 105 Or. 259, 209 P. 610, 611. No distinction may be made between a soldier's "bonus" given for past service and a "pension," the one being a reward for past military services payable at once, and the other such a reward payable in installments. People v. Westchester County Nat. Bank of Peekskill, 231 N.Y. 465, 132 N.E. 241, 243, 15 A.L.R. 1344.

BONUS JUDEX SECUNDUM iEQUUM ET BONUM JUDICAT, ET 1EQUITATEM STRICTO JURI PRIEFERT. A good judge decides according to what is just and good, and prefers equity to strict law. Co.Litt. 34.

BONUS STOCK. Technically, stock issued to the purchasers of bonds as an inducement to them to purchase bonds or loan money. California Trona Co. v. Wilkinson, 20 Cal.App. 694, 130 P. 190, 194.

BONY. Slate and 'other refuse from mine. Maksimshuk v. Union Collieries Co., 128 Pa.Super. 86, 193 A. 669, 671, 672, 673.

BOODLE. Usually applied to designate the money held to be paid or paid as a bribe for corrupt official action. Boehmer v. Detroit Free Press Co., 94 Mich. 7, 9, 53 N.W. 822, 823, 34 Am.St.Rep. 318.

BOODLING. In the slang of the day, corrupt legislative practices and corrupt influences affecting legislation. Julian v. Kansas City Star Co., 209 Mo. 35, 107 S.W. 496, 501.

BOOK. An assembly or concourse of ideas expressed in words. U. S. v. One Obscene Book Entitled "Married Love", D.C.N.Y., 48 F.2d 821, 823. A literary composition which is printed; a printed composition bound in a volume. Scoville v. Toland, 21 Fed.Cas. 864. The largest subdivisions of a treatise or other literary composition.

A bound volume consisting of sheets of paper, not printed, containing manuscript entries; such as a merchant's account-books, dockets of courts, etc. A manuscript as a "book". In re Beecher's Estate, 17 Pa.C.C.R. 161; 8 L.J.Ch. 105. "Financial statement" of bank "book". State v. Cloutier, 181 La. 222, 159 So. 330.

Minute book of bank as "book." Lewis v. U. S., C.C.A. Okl., 22 F.2d 760, 764. Papers prepared in the progress of a cause, though entirely written, and not at all in the book form, such as demurrer-books, error-books, paper-books, etc. Photographs as books. Marietta Mfg. Co. v. Hedges-Walsh-Weidner Co., 9 W.W.Harr. 511, 2 A.2d 922, 927. Records made on loose sheets as book. Town of Bennington v. Booth, 101 Vt. 24, 140 A. 157, 159, 57 A.L.R. 156. X-ray pictures as books. Whetsel v. Shaw, 343 Pa. 182, 22 A.2d 751, 753.

In copyright law, the term may include a pamphlet, a magazine, a collection of blank forms, or a single sheet of music or of ordinary printing. U. S. v. Bennett, 24 Fed. Cas. 1,093; M. Witmark & Sons v. Standard Music Roll Co., N.J., 221 F. 376, 380, 137 C.C.A. 184. A term which distinguishes writings from such other copyrightable subjects. Sebring Pottery Co. v. Steubenville Pottery Co., D.C.Ohio, 9 F.Supp. 384, 386.

### Book Account

A detailed statement, in the nature of debits and credits between persons; an' account or record of debit and credit kept in a book. Taylor v. Horst, 52 Minn. 300, 54 N.W. 734; Wright v. Loaiza, 177 Cal. 605, 171 P. 311. A book in which a detailed history of business transactions is entered; a record of goods sold or services rendered; a statement in detail of the transactions between parties. Tillson v. Peters, 41 Cal.App.2d 671, 107 P.2d 434, 438.

Entire account between parties at time action Is commenced. Gardner v. Rutherford, 57 Cal.App.2d 874, 136 P.2d 48, 52. Entries on loose pages. Foothill Ditch Co. v. Wallace Ranch Water Co., 25 Cal.App.2d 555, 78 P.2d 215, 220.

### Book Debt

The words "book debt" include goods sold and delivered, and work, labor, and services performed, the evidence of which consists of entries in an original book. Hamill v. O'Donnell, 2 Miles, Pa., 102.

### Book of Acts

A term applied to the records of a surrogate's court. 8 East, 187.

### Book of Adjournal

In Scotch law. The original records of criminal trials in the court of justiciary.

### Book of Original Entries

A book in which a merchant enters from day to day a record of his transactions. McKnight v. Newell, 207 Pa. 562, 57 A. 39. A book kept for charging goods sold and delivered, in which the entries are made contemporaneously with the delivery of the goods. United Grocery Co. v. J. M. Dannelly & Son, 93 S.C. 580, 77 S.E. 706, Ann.Cas. 1914D, 489. A book in which a detailed history of business transactions is entered. Nicola v. U. S., C.C.A.Pa., 72 F.2d 780, 783.

Distinguished from such books as a ledger. But see Cassil v. Carter, 98 Okl. 49, 223 P. 685, 686. Workmen's slips for repairs done on automobiles, although not bound in book form. H. W. Emeny Auto Co. v. Neiderhauser, 175 Iowa 219, 157 N.W. 143, 144.

### Book of Rates

An account or enumeration of the duties or tariffs authorized by parliament. 1 Bl.Comm. 316.

### Book of Responses

In Scotch law. An account which the directors of the chancery kept to enter all non-entry and relief duties payable by heirs who take precepts from chancery.

### Book Value

As applied to stock, the" value shown by deducting liabilities and other matters required to be deducted from assets, Elhard v. Rott, 36 N.D. 221, 162 N.W. 302; Gurley v. Woodbury, 177 N.C. 70, 97 S.E. 754, 756; the value determined by net profits or deficit, Davis v. Coshnear, 129 Me. 334, 151 A. 725, 727. The value found by adding to par value the plus value of surplus, In re Fisher's Estate, 344 Pa. 607, 26 A.2d 192, 196. As applied to finance, the value of anything as shown in books of account. Davis v. Coshnear, 129 Me. 334, 151 A. 725, 727.

"Book value" of a business is based upon actual costs of a stock of merchandise and accounts on hand less depreciation. Mills v. Rich, 249 Mich. 489, 229 N.W. 462, 463. "Book value" of building and loan stock is proportionate amount of net assets applicable. Thirteenth Ward Building & Loan Ass'n of Newark v. Weissberg, 115 N.J.Eq. 487, 170 A. 662, 665, 98 A.L.R. 134.

### Bookland

In English law. Land, also called "charterland," which was held by deed under certain rents and free services, and differed in nothing from free socage land. 2 Bl.Comm. 90.

### Books

All the volumes which contain authentic reports of decisions in English courts, from the earliest times to the present, are called, *par excellence,* "The Books." Wharton.

### Books of Account

Books in which merchants, traders, and business men generally keep their accounts. Colbert v. Piercy, 25 N.C. 80. Entries made in the regular course of business. Nicola v. U. S., C.C.A.Pa., 72 F.2d 780, 783. Entries on loose leaves or cards. 12 Okl.St.Ann. § 501. Maney , v. Cherry, 170 Okl. 469, 41 P.2d 82, 83. Serial, continuous, and permanent memorials of business and affairs. Cudahy Packing Co. v. U. S., C.C.A.I11., 15 F.2d 133, 136. Broderick v. Adamson, 159 Misc. 634, 288 N.Y.S. 688, 696.

Pad slips, cash register items, and adding machine slips, pinned together and preserved. Home Ins. Co. v. Flewellen, Tex.Civ.App., 221 S.W. 630, 631. A diary. State v. Coffey, 8 Wash.2d 504, 112 P.2d 989, 991. A ledger of accounts. In re Anderson, D.C.N.Y., 35 F.Supp. 717, 719. A memorandum. Brett v. Dean, 239 Ala. 675, 196 So. 881, 883. A pay-roll book. Hirsch v. Automatic Canteen Co. of America, 296 Ill. App. 47, 15 N.E.2d 888.

### Books of Bank

Stock books of bank. Broderick v. Adamson, 159 Misc. 634, 288 N.Y.S. 688, 696.

### Books of Corporations

"Books, records, and papers" of corporations as interchangeable terms. Birmingham News v. State, 207 Ala. 440, 93 So. 25, 26. Whatever is kept as written evidence of official doings and business transactions. First Nat. Bank of Colorado Springs v. Holt, Mo.App., 158 S.W.2d 229, 231.

### Books of Tax Receiver

Tax digests, copies of which must be placed in hands of state revenue commissioner, tax collector, etc. Cady v. State, 198 Ga. 99, 31 S.E.2d 38, 43.

### Face of Book

See Face of Book.

### Office Book

See Office.

### Reference Books

Books to refer to. State v. Innes, 89 Kan. 168, 130 P. 677, 679,

BOOKED. Engaged, destined, bound to promise or pledge oneself to make an engagement. Mente & Co. v. Heller, 99 N.J.Law, 475, 123 A. 755, 756.

BOOKING CONTRACT. A contract made by agents who procure contracts for appearance of acts and actors in theaters. Hart v. B. F. Keith Vaudeville Exchange, C.C.A.N.Y., 12 F.2d 341, 342, 47 A.L.R. 775.

BOOKMAKER. A professional betting man, especially one connected with the turf. City of Portland v. Duntley, Or., 203 P.2d 640, 644.

BOOKMAKING. Originally, the collection of sheets of paper or other substances on which entries could be made, either written *or* printed. People ex rel. Lichtenstein v. Langan, 196 N.Y. 260, 89 N.E. 921, 922, 25 L.R.A.,N.S., 479, 17 Ann. Cas. 1081. The term now commonly denotes the recording or registering of bets or wagers on any trial or contest of speed or power of endurance or selling pools. People of State of New York v. Bennett, C.C.N.Y., 113 Fed. 515, 516. A species of betting on horse races. Ex parte Hernan, 45 Tex.Cr.R. 343, 77 S.W. 225, 226. The bets are booked or a record kept of them in a book. Spies v. Rosenstock, 87 Md. 14, 39 A. 268, 269.

BOOKMAKING ESTABLISHMENT. Where wagers are made on horse races being run at tracks in various parts of United States. Albright v. Karston, 206 Ark. 307, 176 S.W.2d 421, 422.

BOOM. An inclosure formed by piers and a chain of spars to collect or store logs or timber. Powers' Appeal, 125 Pa. 175, 17 A. 254, 11 Am.St.Rep. 882; Gasper v. Heimbach, 59 Minn. 102, 60 N.W. 1080. Spars or logs and chains or other fixtures used to keep them in place. Rollins v. Clay, 33 Me. 132, 138.

BOOM COMPANY. A company formed to improve streams for floating of logs by booms and other contrivances, and to run, drive, boom and raft logs.

BOOMAGE. A charge on logs for use of a boom in collecting, storing, or rafting them. Lumber Co. v. Thompson, 83 Miss. 499, 35 So. 828. A right of entry on riparian lands to fasten booms and boom sticks. Farrand v. Clarke, 63 Minn. 181, 65 N.W. 361.

BOON DAYS. In English law. Certain days in the year (sometimes called "due days") on which tenants in copyhold were obliged to perform corporal services for the lord. Whishaw.

BOOSTED FIRE. A fire wherein some inflammable substance other than that of which the building was constructed or which it contained contributed to its burning and spreading. State v. Lytle, 214 Minn. 171, 7 N.W.2d 305, 309.

BOOT, or BOTE. An old Saxon word, equivalent to "estovers."

BOOTHAGE. See Bothagitlm.

BOOTING, or BOTING, CORN. Certain rent corn, anciently so called. Cowell.

BOOTLEGGER. A seller of whisky. Medlock v. State, 79 Tex.Cr.R. 322, 185 S.W. 566, 568. One engaged in unlawful disposition of liquor. Hathaway v. Benton, 172 Iowa 299, 154 N.W. 474, 476. One who sells liquor on the sly. Knothe v. State, 115 Neb. 119, 211 N.W. 619, 621.

BOOTLEGGING. A popular designation for the use, possession, or transportation of liquor in violation of the law, Commonwealth v. Cicere, 282 Pa. 492, 128 A. 446, 448, importing the peddling and illegal sales of intoxicating liquor, Lamar v. State, 190 Ind. 235, 130 N.E. 114.

BOOTSTRAP DOCTRINE. The decision of a court on a special as well as a general appearance that it has jurisdiction is not subject of collateral attack but is res judicata. Peri v. Groves, 183 Misc. 579, 50 N.Y.S.2d 300, 308.

BOOTY. Property captured from the enemy in war, on land. U. S. v. Bales of Cotton, 28 Fed. Cas. 302.

BOOZE. Intoxicating liquor. Tennant v. F. C. Whitney & Sons, 133 Wash. 581, 234 P. 666, 669.

BORD. An old Saxon word, signifying a cottage; a house; a table.

BORD-BRIGCH. In Saxon law. A breach or violation of suretyship; pledge-breach, or breach of mutual fidelity.

BORD-HALFPENNY. A customary small toll paid to the lord of a town for setting up boards, tables, booths, etc., in fairs or markets.

BORDAGE. In old English law. A species of base tenure, by which certain "bord lands" were anciently held in England; the service was that of keeping the lord in small provisions.

BORDARIA. A cottage.

BORDARII, or BORDIMANNI. In old English law. Tenants of a less servile condition than the *villani,* who had a bond or cottage, with a small parcel of land, on condition they should supply the lord with small provisions. Spelman.

BORDER WARRANT. A process granted by a judge ordinary, on either side of the border between England and Scotland, for arresting the person or effects of a person living on the opposite side, until he find security, *judicio sisti.* Bell.

BORDEREAU. In French law. A note enumerating the purchases and sales which may have been made by a broker or stockbroker. This name is also given to the statement given to a banker with bills for discount or coupons to receive. Arg.Fr.Merc.Law, 547. A detailed statement of account; a summary of an instrument.

BORDLANDS. The demesnes which the lords keep in their hands for the maintenance of their board or table. Cowell. Also lands held in bondage. Lands which the lord gave to tenants on condition of supplying him with small provisions, etc.

BORDLODE. A service anciently required of tenants to carry timber out of the woods of the lord to his house; or it is said to be the quantity of food or provision which the bordarii or bordmen paid for their bordlands. Jacob.

BORDSERVICE. A tenure of bordlands.

BOREL-FOLK. Country people; derived from the French *bourre,* (Lat. *floccus,)* a lock of wool, because they covered their heads with such stuff. Blount.

BORG. In Saxon law. A pledge, pledge giver, or surety. The name given among the Saxons to the head of each family composing a tithing or decennary, each being the pledge for the good conduct of the others. Also the contract or engagement of suretyship; and the pledge given.

BORGBRICHE. A breach or violation of suretyship, or of mutual fidelity. Jacob.

BORGESMON. In Saxon law. The name given to the head of each family composing a tithing.

BORGH OF HAMHALD. In old Scotch law. A pledge or surety given by the seller of goods to the buyer, to make the goods forthcoming as his own proper goods, and to warrant the same to him. Skene.

BORN. A child *en venire sa mere.* Merrill v. Winchester, 120 Me. 203, 113 A. 261, 264. If an infant is born dead or at such an early stage of pregnancy as to be unable to live, it is to be considered as never born. Marsellis v. Thalhimer, 2 Paige, Ch., N.Y., 35.

BORN ALIVE. Where child, although it never cried, breathed and its heart beat some minutes, it was "born alive." Sanford v. Getman, 124 Misc. 80, 206 N.Y.S. 865. A child never heard to cry, but whose heart beats could be heard, though no respiration could be induced, was "born alive." In re Union Trust Co., 89 Misc. 69, 151 N.Y.S. 246. 253.

BORN OUT OF WEDLOCK. Children whose parents are not, and have not been, married to each other regardless of marital status of either parent with respect to another. State v. Coliton, 73 N.D. 582, 17 N.W.2d 546, 549, 552, 156 A.L.R. 1403.

BORN OUTSIDE THE UNITED STATES. Where, at time of birth of children born in the United States, their father was a duly accredited diplomatic representative of the French Republic to the United States, they became subject to the jurisdiction of France, and were "born outside of the United States" within the naturalization provisions of section 315 of the Nationality Act of 1940, 8 U.S.C.A. § 715. In re Thenault, D.C.D.C., 47 F. Supp. 952, 953.

BOROUGH.

In English Law

A town, a walled town. Co.Litt. 108b. A town of note or importance; a fortified town. Cowell. An ancient town. Litt. 164. A corporate town that is not a city. Cowell. An ancient town, corporate or not, that sends burgesses to parliament. Co.Litt. 109a; 1 Bl.Comm. 114, 115. A city or other town sending burgesses to parliament. 1 Steph.Comm. 116. In its more modern English acceptation, a town or city or place organized for government.

A parliamentary borough is a town which returns one or more members to parliament.

In Scotch Law

A corporate body erected by the charter of the sovereign, consisting of the inhabitants of the territory erected into the borough. Bell.

In American Law

In Pennsylvania, Connecticut and New Jersey, a part of a township having a charter for municipal purposes. Southport v. Ogden, 23 Conn. 128. See, also, 1 Dill.Mun.Corp. § 41, n.

A territorial fraction of a city having certain powers with reference to local concerns. Crose v. City of Los Angeles, 175 Cal. 774, 167 P. 386, 387. "Village" and "borough" as duplicate or cumulative names of the same thing. Brown v. State, 18 Ohio St. 496.

Borough Courts

In English law. Private and limited tribunals, held by prescription, charter, or act of parliament, in particular districts for the convenience of the inhabitants, that they may prosecute small suits and receive justice at home.

Borough English -

A custom prevalent in some parts of England, by which the youngest son inherits the estate in preference to his older brothers. 1 Bl.Comm. 75.

The custom is said by Blackstone to have been derived from the Saxons, and to have been so called in distinction from the Norman rule of descent; 2 Bla.Comm. 83.

Borough Fund

In English law. The revenues of a municipal borough from rents and produce of its land, *houses,* and stocks and supplemented where necessary by a borough rate.

Borough-Heads

Borough-holders, bors-holders, or burs-holders.

Borough-Reeve

The chief municipal officer in towns unincorporated before the municipal corporations act, 5 & 6 Wm. IV, c. 76.

Borough Sessions

Courts of limited criminal jurisdiction, established in English boroughs under the municipal corporations act.

Pocket Borough

A borough entitled to send a representative to parliament, in which a single individual could entirely control the election.

BORRASCA. Absence of profit, or not enough profit to pay the cost of operation, of a placer mine. Ballagh v. Williams, 50 Cal.App.2d 10, 122 P.2d 343, 344.

BORROW. To solicit and receive from another any article of property or thing of value with the intention and promise to repay or return it or its equivalent.

Strictly speaking, borrowing implies a gratuitous loan. Carter-Mullaly Transfer Co. v. Angell, Tex.Civ.App., 181 S.W. 237, 238. But money may be "borrowed" on an agreement to pay interest for its use. Legal Tender Cases, 110 U.S. 421, 4 S.Ct. 122, 28 L.Ed. 204. Though the word is often used in the sense of returning the thing borrowed in *specie,* where money is borrowed, the identical money loaned is not to be returned. In a broad sense the term means a contract for the use of money. State v. School Dist., 13 Neb. 88, 12 N.W. 812. The term may be used to express the idea of receiving something from another for one's own use, to appropriate. Finch *v.* McClellan, 77 Ind. App. 533, 130 N.E. 13, 15. The word "loan" is the correlative of "borrow." U. S. v. Warn, D.C.Idaho, 295 F. 328, 330. The term when used in connection with lending an automobile chauffeur does not imply that the owner surrenders control over him. Hooper v. Brawner, 148 Md. 417, 129 A. 672, 677. Compare Henderson *v.* State, 75 Fla. 464, 78 So. 427, 428, holding that an indictment alleging that defendant "did borrow" a shotgun sufficiently alleged that defendant received the shotgun into his possession. The right to borrow money as applied to a municipal corporation is a power to create indebtedness. Jones v. Board of Education of Guilford County, 185 N.C. 303, 117 S.E. 37, 40.

Agreement by building and loan association, in purchasing residence property on which it had a first mortgage, to assume a second mortgage. Gardner v. Johns, 64 Ohio App. 229, 28 N.E.2d 691, 694.

"Borrow" has been held the reciprocal action with "to lend". Bank of United States v. Drapkin & Goldberg Const. Co., City Ct., N.Y., 11 N.Y.S.2d 334, 336. Dirt taken from plots of ground near sides of highway embankment. State v. Smith, 167 La. 301, 119 So. 56, 61. Earth brought from outside highway location and used for embankments. Barry v. Duffin, 290 Mass. 398, 195 N.E. 511, 514.

BORROW PIT. A pit or bank from which material is taken for use in filling or embanking. Haynes v. Jones, 91 Ohio St. 197, 110 NE. 469, 470.

BORROWE. In old Scotch law. A pledge.

BORROWED CAPITAL. Moneys due by corporation to another corporation used as its capital. State v. Banana Selling Co., 185 La. 668, 170 So. 30, 32.

Amount standing on books to personal credit of stockholders credited without restriction or limitation on stockholders as to manner or time of payment to them of respective accounts. Weed & Bro. v. U. S., Ct.C1., 38 F.2d 935, 940. Dividends declared by corporation but not paid during taxable year. Bulger Block Coal Co. v. U. *S.,* Ct.Ci., 48 F.2d 675, 677; Southport Mill v. Commissioner of Internal Revenue, C.C.A.La., 26 F.2d 17. Payment of losses sustained by corporation by its principal stockholder. State v. Mayer Sugar & Molasses Co., 204 La. 742, 16 So.2d 251, 253.

BORROWED MONEY OR PROPERTY. Notes and bonds given in payment of assets. Coal Co. v. United States, C.C.A.W.Va., 137 F.2d 948, 953. Credit by bank to payee's account of amount of customer's notes taken in lieu of cash. Depart-

ment of Treasury (Gross Income Tax Division) v. Advance Paint Co., 222 Ind. 294, 53 N.E.2d 59. Profits loaned by partners to partnership. Nye v. U. S., C.C.A.Mass., 84 F.2d 457, 462.

BORROWER. He to whom a thing is lent at his request.

Under usury •statute, one having the use of money by forbearance of his creditor, or any person who secures the use of money in any way upon an excessive consideration, Law, Clark & Co. v. Mitchell, 200 Ala. 565, 76 So. 923, 924; the party who is bound by original contract to pay loan, Faber *v.* Siegel, 286 N.Y.S. 974, 158 Misc. 722; the purchaser of land subject to usurious mortgage and subsequent mortgagees, Hatch v. Baker, 249 N.Y.S. 215, 217, 139 Misc. 717; the indorser of note who received no part of money advanced and who was mere surety, Faber v. Siegel, 286 N.Y.S. 974, 158 Misc. 722.

BORROWING POWER. Signifies only an unfunded indebtedness. Bond v. Cowan, 272 Mich. 296, 261 N.W. 331.

BORROWINGS. Checks by bank against second bank anti honored while items deposited.by former were in process of collection. Guaranty by bank of transaction where another bank issued letter of credit for first bank's customer. Indebtedness represented by notes given by bank when borrowing money. Overdrafts by bank maintaining checking account with another bank. Schramm v. Bank of California Nat. Ass'n, 143 Or. 546, 20 P.2d 1093, 1096.

BORSHOLDER. In Saxon law. The borough's ealder, or headborough.

BOSCAGE. In English law. The food which wood and trees yield to cattle; browsewood mast, etc. Spelman. An ancient duty of wind-fallen wood in the forest. Manwood.

BOSCARIA. Wood-houses, or ox-houses.

BOSCUS. Wood; growing wood of any kind, large or small, timber or coppice. Cowell; Jacob.

BOSTON CREAM PIE. Two layers of sponge cake with a layer of a sort of cream custard. Lohse v. Coffey, D.C.Mun.App., 32 A.2d 258, 259.

BOTE, BOT. In old English law. A recompense or compensation, or profit or advantage. Also reparation or amends for any damage done. Necessaries for the maintenance and carrying on of husbandry. An allowance; the ancient name for estovers.

*House-bote* is a sufficient allowance of wood from off the estate to repair or burn in the house, and sometimes termed "fire-bote ;" *plow-bote* and *cart-bote* are wood to be employed in making and repairing all instruments of husbandry; and *hay-bote* or *hedge-bote* is wood for repairing of hays, hedges, or fences. The word also signifies reparation for any damage or injury done, as *man-bote,* which was a compensation or amends for a man slain, etc.

BOTELESS. In old English law. Without amends; without the privilege of making satisfaction for a crime by a pecuniary payment; without relief or remedy. Cowell.

BOTH. The one and the other; the two without the exception of either. Lower Indian Creek Drainage and Levee Dist. of Cass County v. Vallery, 343 Ill. 49, 174 N.E. 842, 843. All of two, United States v. Bachman, D.C.Pa., 246 F. 1009, 1011. The term likewise has a meaning which excludes more than two mentioned subject matters. In re Turner's Estate, 171 Misc. 78, 11 N.Y. S.2d 800, 802.

"Either," may mean "both." Kibler v. Parker, 191 Ark. 475, 86 S.W.2d 925, 926.

*Both Real and Personal*

Use in will to indicate all of testatrix' property. Hoffman v. Hoffman, 61 Ohio App. 371, 22 N.E.2d 652, 654.

BOTHA. In old English law. A booth, stall, or tent to stand in, in fairs or markets. Cowell.

BOTHAGIUM, or BOOTHAGE. Customary dues paid to the lord of a manor or soil, for the pitching or standing of booths in fairs or markets.

BOTHNA, or BUTHNA. In old Scotch law. A park where cattle are inclosed and fed. Bothna also signifies a barony, lordship, etc. Skene.

BOTILER OF THE KING. An officer who provided the king's wines. By virtue of his office, he might choose, .out of every ship laden with wines, one cask before the mast, and one behind. 25 Edw. III, st. 5, c. 21. Wharton. *Cf.* Butlerage.

BOTTELLARIA. A buttery or cellar, in which bottles or butts of wine and other liquors are deposited. Wharton.

BOTTLE. An open mouthed vessel, with a neck with an aperture which may be closed, capable of containing liquids. Fieldcrest Dairies v. City of Chicago, D.C.Ill., 35 F.Supp. 451, 452.

BOTTOM HOLE CONTRACT. When operator drills a well to a certain depth, the owners or persons for whom the well is drilled will pay a certain sum. Barnett v. Kemerer, 179 Okl. 588, 66 P.2d 1053, 1055.

BOTTOM LAND. As used in a contract to convey means low land formed by alluvial deposits along the river, low-lying ground, a dale, valley, or intervale. Lexington & E. Ry. Co. v. Williams, 183 Ky. 343, 209 S.W. 59, 62.

BOTTOMAGE. L. Fr. Bottomry.

BOTTOMRY. In maritime law. A contract by which the owner of a ship borrows for the use, equipment, or repair of the vessel, and for a definite term, and pledges the ship (or the keel or *bottom* of the ship, *pars pro toto)* as security; it being stipulated that if the ship be lost in the specified voyage, or during the limited time, by any of the perils enumerated, the lender shall lose his money. Carrington v. The Pratt, 18 How. 63, 15 L.Ed. 267; Braynard v. Hoppock, 7 Bosw.N.Y. 157.

A contract by which a ship or its freightage *is* hypothecated as security for a loan, which is to be repaid only in case the ship survives a particular risk, voyage, or period. Civ.Code Cal. § 3017. The contract usually in form a bond.

When the loan is not made on the ship, but on the goods on board, and which are to be sold or exchanged in the course of the voyage, the borrower's personal *responsibility* is deemed the principal security for the performance of the contract, which is therefore called *"respondentia."*

BOTTOMRY BOND. The instrument embodying the contract or agreement of bottomry. A contract for a loan on the bottom of the ship, at an extraordinary interest, upon maritime risks, to be borne by the lender for a voyage, or for a definite period. The Grapeshot, 9 Wall. 135, 19 L.Ed. 651.

BOTULISM. Food poisoning caused by a toxin which is produced by Clostridium (bacillus) botulinum. Armour & Co. v. Leasure, 177 Md. 393, 9 A.2d 572, 575.

BOUCHE, Fr. The mouth. An allowance of provision. *Avoir bouche a court;* to have an allowance at court; to be in ordinary at court; to have meat and drink scotfree there. Blount; Cowell.

BOUCHE OF COURT, or BUDGE OF COURT. A certain allowance of provision from the king to his knights and servants, who attended him on any military expedition.

BOUGH OF A TREE. In feudal law. A symbol which gave seisin of land, to hold of the donor *in capite.*

BOUGHT. The word "bought" implies a completed transaction, a vesting of the right of title to and possession of the property sold, Bull v. Morrison, Tex.Civ.App., 241 S.W. 561, 562, and also imports a valuable consideration, Grimes v. State, 32 Ga. App. 541, 123 S.E. 918.

BOUGHT AND SOLD NOTES. A note of the sale by a broker employed to buy and sell goods is called a "sold note," and a like note to the seller is called a "bought note." Avondale Mills v. Benchley Bros., 244 Mass. 153, 138 N.E. 586, 589.

BOULEVARD. The word originally indicated a bulwark or rampart, and afterwards applied to a public walk or road on the site of a demolished fortification, and is now employed in same sense as public drive. A street or highway with park-like appearance; or one specially designed for pleasure walking or driving. Newbold v. Brotzge, 209 Ky. 218, 272 S.W. 755, 756; Chaplin v. Kansas City, 259 Mo. 479, 168 S.W. 763, 765. A wide street, or a street encircling a town, with sides or center for shade trees, etc. State ex rel. Copland v. City of Toledo, 75 Ohio App. 378, 62 N.E.2d 256, 258. It is adapted and set apart for purposes of ornament, exercise, and amusement. See, also, Avenue. A "public way", City of Medford v. Metropolitan District Commission, 303 Mass. 537, 22 N.E.2d 110, 111.

It is not technically a street, avenue, or highway. Howe v. Lowell, 171 Mass. 575, 51 N.E. 536; Park Com'rs v. Farber, 171 Ill. 146, 49 N.E. 427. "Street" and "boulevard" may be interchangeable. City of Fargo v. Gearey, 33 N.D. 64, 156 N.W. 552, 555.

BOUNCER. A term used to designate persons employed to preserve the peace in establishments such as night clubs and other places of amusement where people indulge in dancing, drinking and in gambling. Moore v. Blanchard, La.App., 35 So.2d 667, 669.

BOUND. As an *adjective,* denotes the condition of being constrained by the obligations of a bond or a covenant.

In the law of shipping, "bound to" or "bound for" denotes that the vessel spoken of is intended or designed to make a voyage to the place named. U. S. v. Bengochea, C.C.A.Fla., 279 F. 537, 541.

"Bound" and "concluded" as synonymous. McKinnon v. Chenoweth, 176 Or. 74, 155 P.2d 944, 954.

As a noun, denotes a limit or boundary, or a line inclosing or marking off a tract of land. In the phrase "metes and bounds," denotes the natural or artificial marks which indicate their beginning and ending. "Bound" may signify the limit itself, and "boundary" designate a visible mark which indicates the limit. "Bound" and "duty" as synonymous. Essenpreis v. Elliott's Department Store Co., Mo.App., 37 S.W.2d 458, 462.

BOUND BAILIFFS. In English law, Sheriffs' officers are so called, from their being usually *bound* to the sheriff in an obligation with sureties, for the due execution of their office. 1 Bl.Comm. 345, 346.

BOUNDARY. Every separation, natural or artificial, which marks the confines or line of division of two cdntiguous estates. Civ.Code La. art. 826. Limits or marks of enclosures if possession be without title, or the boundaries or limits stated in title deed if possession be under a title. Snelling v. Adair, 196 La. 624, 199 So. 782, 787.

"At the entrance" and "at the boundary" as synonymous. McGough v. Hendrickson, 58 Cal.App.2d 60, 136 P. 2d 110, 114. Banks or confines at ordinary high water as boundary of water course. Beck v. Kulesza, 4 W.W.Harr., Del., 559, 156 A. 346, 349. Meander line as "boundary". United States v. Elliott, C.C.A.Okl., 131 F.2d 720, 724.

### Boundary Suit

Trespass to try title in which every matter in dispute would be determined by determination of boundary line. Southern Pine Lumber Co. v. Whiteman, Tex.Civ.App., 104 S.W.2d 635, 637.

### Case of Boundary

One where the location of the boundary is the determining question of the entire case. West Lumber Co. v. Goodrich, 113 T. 14, 223 S.W. 183, 191; Maxfield v. E. L. Sterling & Sons, 110 Tex. 212, 217 S.W. 937.

### Natural Boundary

Any formation or product of nature which may serve to define and fix one or more of the lines inclosing an estate or piece of property. See Peuker v. Canter, 62 Kan. 363, 63 P. 617.

### Private Boundary

An artificial boundary set up to mark the beginning or direction of a boundary line.

### Public Boundary

A natural boundary; a natural object or landmark used as a boundary or as a beginning point for a boundary line.

BOUNDED TREE. A tree marking or standing at the corner of a field or estate.

BOUNDERS. In American law. Visible marks or objects at the ends of the lines drawn in surveys of land, showing the courses and distances. Burrill.

BOUNDS. The external or limiting lines, either real or imaginary, of any object or space; that which limits or circumscribes. Stone v. Waukegan, C.C.A. 7, 205 F. 495, 496.

Contract as meant by "bounds". City of Elkins v. Stickley, 114 W.Va. 103, 170 S.E. 902, 903. Edges of road as "bounds of the highway". Decker v. Roberts, 126 Conn. 478, 12 A.2d 541, 543. Trespass committed by a person who excavates minerals under-ground beyond boundary of his land as "working out of bounds."

BOUNTY. A gratuity, or an unusual or additional benefit conferred upon, or compensation paid to, a class of persons. Iowa v. McFarland, 110 U.S. 471, 4 S.Ct. 210, 28 L.Ed. 198; In re Hoag, D.C. N.Y., 227 F. 478, 479. A premium given or offered to enlisted men to induce enlistment into public service. Abbe v. Allen, 39 How.Prac., N.Y., 488.

An amount appropriated by Congress to repay the city for rental value of land taken for navy yard during Civil War as not a bounty. Moyers v. City of Memphis, 135 Tenn. 263, 186 S. W. 105, 113, Ann.Cas.1918C, 854.

Bounty is the appropriate term where services or action of many persons are desired, and each who acts upon the offer may entitle himself to the promised gratuity. Reward is more proper in the case of a single service, which can be only once performed, and therefore will be earned only by the person or co-operative persons who succeed while others fail. Ingram v. Colgan, 106 Cal. 113, 38 P. 315, 28 L.R.A. 187, 46 Am.St.Rep. 221. Bonus, suggests the idea of a gratuity to induce a money transaction between individuals. Abbott.

Bounty Lands

Portions of the public domain given or donated as a bounty for services rendered, chiefly for military service. See 43 U.S.C.A. § 791.

Bounty of Queen Ann

A name given to a royal charter, which was confirmed by 2 Anne, c. 11, whereby all the revenue of first-fruits and tenths was vested in trustees, to form a perpetual fund for the augmentation of poor ecclesiastical livings. Wharton.

BOURDON TUBE. A pressure-responsive device comprising a hollow tubular member. James P. Marsh Corporation v. United States Gauge Co., D. C.Ill., 42 F.Supp. 998, 1001.

BOURG.

In old French law. An assemblage of houses surrounded with walls; a fortified town or village.

In old English law. A borough, a village.

BOURGEOIS. The inhabitant of a *Bourg*. A person entitled to the privileges of a municipal corporation; a burgess. A member of the middle classes. People v. Gitlow, 234 N.Y. 132, 136 N.E. 317, 322.

BOURSE, Fr. An exchange; a stock-exchange.

BOURSE DE COMMERCE. In the French law. An aggregation, sanctioned by government, of merchants, captains of vessels, exchange agents, and courtiers, the two latter being nominated by the government, in each city which has a *bourse*. Brown.

BOUSSOLE. In French marine law. A compass; the mariner's compass.

BOUWERYE. Dutch. In old New York law. A farm; a farm on which the farmer's family resided.

BOUVVIVIEESTER (also BOUWMASTER). Dutch. In old New York law. A farmer.

BOVARIUS, *adj.* Lat. Relating to horned cattle. The Forum Bovarium was the cattle market at Rome, near the Circus Maximus. It had a large brazen statue of an ox.

BOVATA TERME. As much land as one ox can cultivate. Said by some to be thirteen, by others eighteen, acres in extent. Skene; Spelman; Co. Litt. 5a. See Carucata.

BOVINE. From the Latin "bos," meaning cow or bull. "Neat cattle" are animals belonging to the genus "bos," a term not embracing horses, sheep, goats, or swine. "Cattle" as generally used in the Western States means "neat cattle"; it includes cows, bulls, and steers, but not horses, mares, geldings, colts, mules, jacks, or jennies, goats, hogs, sheep, shoats, or pigs. State v. District Court of Fifth Judicial Dist. in and for Nye County, 42 Nev. 218, 174 P. 1023, 1025.

BOW-BEARER. An under-officer of the forest, whose duty it was to oversee and true inquisition make, as well of sworn men as unsworn, in every bailiwick of the forest; and of all manner of trespasses done, either to vert or venison, and cause them to be presented, without any concealment, in the next court of attachment, etc. Cromp. Jur. 201.

BOWIE KNIFE. A long knife shaped like a dagger but having only one edge. Knox v. State, 157 Term. S.W.2d 318, 319. A butcher knife, Mireles v. State, 80 Tex.Cr.R. 648, 192 S.W. 241, 242; a "dirk," Bivens v. State, 133 Tex.Cr.R. 604, 113 S.W.2d 921.

BOWYERS. Manufacturers of bows and shafts. An ancient company of the city of London.

BOX. A construction of permanent, fixed dimensions and size. Lyon, Inc., v. Clayton & Lambert Mfg. Co., D.C.Del., 13 F.Supp. 331, 333.

BOX DOLLY. A vehicle which has but one wheel, a wide cylindrical drum in the center of it, and is shaped like a box, the lower part of which extends down as far as the axis of the drum. The Rosalie Mahony, D.C.Wash., 218 F. 695, 697.

BOX STEP. A passenger car step. Hill v. Minneapolis, St. Paul, & S. S. M. Ry. Co., 160 Minn. 484, 200 N.W. 485, 486.

BOX STRAPPING. Metal strips intended to reinforce the ends of heavy wooden packing cases to prevent them from breaking open. Stanley Works v. Twisted Wire & Steel Co., C.C.A.N.Y., 256 F. 98, 99.

BOXED WEIGHT BASIS. According to weight at time of packing and after wrapping. Swift & Co. v. Wallace, C.C.A.7, 105 F.2d 848, 861,

BOXING BOUT. A contest of skill between two participants. Fischer v. City of Cleveland, 42 Ohio App, 75, 181 N.E. 668, 670.

BOXING OF PINE TREES. As equivalent to "hanging of cups upon timber." Howard V. State, 17 Ala.App. 9, 81 So. 345, 346.

BOY. Legitimate child. In re Dragoni, 53 Wyo, 143, 79 P.2d 465, 468. Male child. Hinerman v. Hinerman, 85 W.Va. 349, 101 S.E. 789, 790.

BOYCOTT. A conspiracy or confederation to prevent the carrying on of business, or to injure the business of any one by preventing potential customers from doing business with him or employing the representatives of said business, by threats, intimidation, coercion, etc. Dick v. Northern Pac. Ry. Co., 86 Wash. 211, 150 P. 8, 12, Ann.Cas.1917A, 638; Hailey v. Brooks, Tex.Civ.App., 191 S.W. 781, 783.

Intimidation and coercion as essential elements. Smythe Neon *Sign* Co. v. Local Union No. 405 of International Brotherhood of Electrical Workers of Cedar Rapids, 226 Iowa 191, 284 *N.W.* 126, 130. Labor union members' voluntary determination to refrain from working in erection of materials not bearing union label. Frank Schmidt Planing Mill Co. v. Mueller, Mo.App., 154 S.W.2d 610, 614, 615. Labor union's promulgation of rule prohibiting members from handling and erecting work not bearing union label, Crescent Planing Mill Co. v. Mueller, 234 Mo.App. 1243, 123 S.W.2d 193, 196. The word does not necessarily import illegality, Smythe Neon Sign Co. *v.* Local Union No. 405 of International Brotherhood of Electrical Workers of Cedar Rapids, 226 Iowa 191, 284 N.W. 126, 130.

Primary Boycott

That which occurs when an organized union of employees, by concerted action, ceases dealing with a former employer. Pierce v. Stablemen's Union, Local No. 8760, 156 Cal. 70, 103 P. 325, 327.

Secondary Boycott

A combination to exercise coercive pressure on customers, actual or prospective, to cause them to withhold or withdraw their patronage. Duplex Printing Press Co. v. Deering, 254 U.S. 443, 41 S. Ct. 172, 176, 65 L.Ed. 349, 16 A.L.R. 196. An act which, when committed in concert, may cause such injury to the public, or be so useless or unfair that these conditions will be decisive as to whether such act is permissible or forbidden. Justin Seubert, Inc., v. Reiff, 98 Misc. 402, 164 N. Y.S. 522, 526.

BOYD RULE. In a corporate reorganization, no junior security may be given participation without providing a new consideration therefor, unless all securities senior to it have received full equivalent of their rights against the estate. Phelan v. Middle States Oil Corp., D.C.N.Y., 124 F.Supp. 728, 781.

BOYLE'S LAW. The principle that as the pressure of gas increases at a fixed temperature, the volume decreases in inverse proportion, or the product of the pressure and volume is a constant quantity. Huntington Development & Gas Co. v. Topping, 115 W.Va. 364, 176 S.E. 424, 425.

BOZERO. In Spanish law. An advocate; one who pleads the causes of others, or his own, before courts of justice, either as plaintiff or defendant. Called also *abogado.*

BRABANT. A variety of the old coin known as a crocard. See Crockards.

BRABANTER. A mercenary soldier or bandit who figured in the Anglo-French wars of the 11th and 13th centuries, and who came from the old duchy of Brabant, now partly comprised in the provinces of Brabant in Belgium and of North Brabant in the Netherlands. Cent. Diet.

BRACERY. The statute of 32 Hen. VIII, c. 9, to prevent the buying and selling of pretended rights or titles, is commonly called "the Bill of Bracery and buying of titles." Cain v. Monroe, 23 Ga. 82, 86, 89, 94; Webb v. Camp, 26 Ga. 354, 357. See Buying Titles.

BRACHIUM MARIS. An arm of the sea.

BRACINUM. A brewing; the whole quantity of ale brewed at one time, for which *tolsestor* was paid in some manors. *Brecina,* a brewhouse.

BRAHMIN, BRAHMAN, or BRAMIN. In Hindu law. A divine; a priest; the first Hindu caste.

BRAIN INJURY. A "concussion" as "brain injury". Le Francois v. Hobart College, Sup., 31 N.Y.S.2d 200, 204.

BRAKE. An effective "brake" consists of the "brake shoe," and the "brake drum." Davis Sewing Mach. Co. v. New Departure Mfg. Co., C.C.A. Ohio, 217 F. 775, 780.

BRANCH. An offshoot, lateral extension, or subdivision. Any member or part of a body or system; a department. Northern Indiana Land Co. v. Carlin, 139 Ind. 324, 127 N.E. 197, 201.

A branch of a family stock is a group of persons related by descent from a common ancestor, and related to the main stock by the fact that that common ancestor descends from the original founder or progenitor. Certificate given by the Trinity House to pilots who have passed an examination. Houston Pilots v. Goodwin, Tex.Civ.App., 178 S.W.2d 308, 311. "Group", "wing", "faction", "party" or "section" and "branch" as synonymous. In re McKean's Estate, 152 Pa, Super. 613, 33 A.2d 51, 52.

BRANCH OF A RIVER. "Branch," as distinguished from a channel of a river, may have two or more separate channels; "channel" meaning primarily the bed. United States v. Hutchings, D.C.Okl., 252 F. 841, 844.

BRANCA OF THE SEA. This term, as used at common law, included rivers in which the tide ebbed and flowed. Arnold v. Mundy, 6 N.J.Law, 86, 10 Am.Dec. 356.

BRANCH PILOT. One possessing a license, commission, or certificate of competency issued by the proper authority and usually after an examination. Dean v. Healy, 66 Ga. 503; State v. Follett, 33 La. Ann. 228. Holder of certificate given by the Trinity House to pilots who have passed an examination. Houston Pilots v. Goodwin, Tex.Civ.App., 178 S.W.2d 308, 311.

BRANCH RAILROAD. A lateral extension of a main line; a road connected with or issuing from a main line. Biles v. Railroad Co., 5 Wash. 509, 32 Pac. 211; Blanton v. Railroad Co., 86 Va. 618, 10 S.E. 925. Feeder lines, Union Pac. R. Co. v. Anderson, 167 Or. 687, 120 P.2d 578, 588.

BRAND. To stamp; to mark, either with a hot iron or with a stencil plate. Dibble v. Hathaway, 11 Hun, N.Y., 575. And see Miles v. Vermont Fruit Co., 98 Vt. 1, 124 A. 559, 563.

BRANDING. An ancient mode of punishment by inflicting a mark on an offender with a hot iron. A recognized punishment for some military offenses. Marking of cattle for the purpose of identification.

BRANDY. Product from distilling wine or the fermented juice of any fruit. Chicago, B. & Q. R. Co. v. California Wine Co., 313 Ill.App. 498, 40 N. E.2d 624, 627.

BRANKS. An instrument formerly used in some parts of England for the correction of scolds; a scolding bridle.

BRASIATOR. A maltster, a brewer.

BR ASIUM. Malt.

BRASS KNUCKLES or KNUCKS. A weapon worn on the hand for the purposes of offense or defense, so made that in hitting with the fist considerable damage is inflicted. It is called "brass knuckles" because it was originally made of brass. The term is now used as the name of the weapon without reference to the metal of which it is made; Patterson v. State, 3 Lea, Tenn., 575.

BRAWL. A clamorous or tumultuous quarrel in a public place, to the disturbance of the public peace.

In English law, specifically, a noisy quarrel or other uproarious conduct creating a disturbance in a church or churchyard. 4 B.Comm. 146; 4 Steph.Comm. 253.

"Tumults" and "brawls" as substantially identical. State v. Perkins, 42 N.H. 464.

BREACH. The breaking or violating of a law, right, or duty, either by commission or omission.

This name is sometimes given to that part of the declaration which alleges the violation of the defendant's promise or duty, immediately preceding the *ad damnum* clause.

Expenditure by administrator of proceeds of policy pending appeal from award of proceeds to administrator as "breach" of obligation of faithful administration. State ex rel. and to Use of Gnekow v. United States Fidelity & Guaranty Co., 349 Mo. 528, 163 S.W.2d 86, 90.

BREACH OF CLOSE. The unlawful or unwarrantable entry on another person's soil, land, or close. 3 Bl.Comm. 209.

BREACH OF CONTRACT. Failure, without legal excuse, to perform any promise which forms the whole or part of a contract. Friedman v. Katzner, 139 Md. 195, 114 A. 884, 886. Prevention or hindrance by party to contract of any occurrence or performance requisite under the contract for the creation or continuance of a right in favor of the other party or the discharge of a duty by him. Sharp v. Williams, 141 Fla. 1, 192 So. 476, 480. Unequivocal, distinct and absolute refusal to perform agreement. R. T. Clark & Co. v. Miller, 154 Miss. 233, 122 So. 475, 481. Violation of obligation. Russell v. Stephens, 191 Wash. 314, 71 P.2d 30, 31.

Anticipatory Breach

A breach committed before there is a present duty of performance, and is the outcome of words evincing intention to refuse performance in the future. King Features Syndicate v. Valley Broadcasting Co., D.C.Tex., 42 F.Supp. 107, 108.

Acquiescence by other party as necessary, Cerruti v. Burdick, 130 Conn. 284, 33 A.2d 333, 335. Clear and unequivocal, renunciation of contract and refusal to perform as essential, Kimel v. Missouri State Life Ins. Co., C.C.A. Kan., 71 F.2d 921, 923. Party to contract putting it out of his power to perform as breach, Assembly, Inc., v. Giller, 134 Misc. 657, 236 N.Y.S. 308, 313. Positive statement that promissor will not or cannot substantially perform contractual duties as breach, Hawkinson v. Johnston, C.C.A. Mo., 122 F.2d 724, 729, 730.

Bankruptcy as "anticipatory breach", In re Robertson, D.C.Ark., 41 F.Supp. 665, 668.

Doctrine is that party denying liability destroys contract so far as able. Pollack v. Pollack, Tex.Com.App., 46 S.W. 2d 292, 293.

Continuing Breach

Such breach occurs where the state of affairs, or the specific act, constituting the breach, endures for a considerable period of time, or is repeated at short intervals.

Constructive Breach

Such breach takes place when the party bound to perform disables himself from performance by some act, or declares, before the time comes, that he will not perform. Jordan v. Madsen, 69 Utah, 112, 252 P. 570, 573; The Adamello, D.C.Va., 19 F.2d 388, 389.

BREACH OF COVENANT. The nonperformance of any covenant agreed to be performed, or the doing of any act covenanted not to be done. Holthouse.

BREACH OF DUTY. In a general sense, any violation or omission of a legal or moral duty. More particularly, the neglect or failure to fulfill in a just and proper manner the duties of an office or fiduciary employment. Every violation by a trustee of a duty which equity lays upon him, whether willful and fraudulent, or done through negligence or arising through mere oversight or forgetfulness, is a breach of duty. Hivick v. Hemme, 118 Okl. 167, 247 P. 692, 693.

BREACH OF POUND. The breaking any pound or place where cattle or, goods distrained are deposited, in order to take them back. 3 Bl.Comm. 146.

BREACH OF PRISON. The offense of actually and forcibly breaking a prison or gaol, with intent to escape. 4 Chit.B1. 130, notes; 4 Steph. Comm. 255. The escape from custody of a person lawfully arrested on criminal process.

BREACH OF PRIVILEGE. An act or default in violation of the privilege of either house of parliament, of congress, or of a state legislature.

BREACH OF PROMISE. Violation of a promise; 'chiefly used as an elliptical expression for "breach of promise of marriage."

BREACH OF THE PEACE. A violation or disturbance of the public tranquillity and order. The offense of breaking or disturbing the public peace by any riotous, forcible, or unlawful proceeding. 4 Bl.Comm. 142, *et seq.;* People v. Bartz, 53 Mich. 493, 19 N.W. 161. "Breach of the peace" is a generic term, State v. Reichman, 135 Tenn. 653, 188 S.W. 225, 228, Ann.Cas.1918B, 889, and includes all violations of public peace or order and acts tending to a disturbance thereof, City of St. Louis v. Slupsky, 254 Mo. 309, 162 S.W. 155, 157, 49 L.R.A.,N.S., 919. One who commits a breach of the peace is guilty of disorderly conduct, but not all disorderly conduct is necessarily a "breach of the peace." Garvin v. City of Waynesboro, 15 Ga.App. 633, 84 S.E. 90, 91; City of Seattle v. Franklin, 191 Wash. 297, 70 P.2d 1049, 1051.

A *constructive* breach of the peace is an unlawful act which, though wanting the elements of actual violence or injury to any person, is yet inconsistent with the peaceable and orderly conduct of society. An *apprehended* breach of the peace is caused by the conduct of a man who threatens another with violence or physical injury, or who goes about in public with dangerous and unusual weapons in a threatening or alarming manner, or who publishes an aggravated libel upon another, etc.

BREACH OF TRUST. Any act done by a trustee contrary to the terms of his trust, or in excess of his authority and to the detriment of the trust; or the wrongful omission by a trustee of any act required of him by the terms of the trust. Also the wrongful misappropriation by a trustee of any fund or property which had been lawfully committed to him in a fiduciary character. Every violation by a trustee of a duty which equity lays upon him, whether willful and fraudulent, or done through negligence, or arising through mere oversight and forgetfulness, is a "breach of trust." The term, therefore, includes every omission and commission in carrying out the trust according to its terms, of care and diligence in protecting and investing the trust property, and of using perfect good faith. H. B. Cartwright & Bro. v. United States Bank & Trust Co., 23 N.M. 82, 167 P. 436, 453. A violation by the trustee of any duty which he owes to the beneficiary. Bruun v. Hanson, C.C.A.Idaho, 103 F.2d 685, 699.

BREACH OF TRUST WITH FRAUDULENT INTENT. Larceny after trust. State v. Owings, 205 S.C. 314, 31 S.E.2d 906, 907.

BREACH OF WARRANTY. In real property law and the law of insurance. The failure or falsehood of an affirmative promise or statement, or the nonperformance of an executory stipulation. Stewart v. Drake, 9 N.J.Law, 139. Failure of insured to disclose trivial and temporary disorders. Franklin Life Ins. Co. v. Critz, C.C.A.Miss., 109 F.2d 417. As used in the law of sales, "breach of warranty," unlike fraud, does not involve guilty knowledge, Anglo-California Trust Co. v. Hall, 211 P. 991, 993, 61 Utah, 223, and rests on contract, Oelwein Chemical Co. v. Baker, 204 Iowa, 66, 214 N.W. 595, 596. Falsity of statements incorporated into fidelity bond. City Bank & Trust Co. v. Commercial Casualty Co., La.App., 176 So. 27, 30.

BREAD ACTS. Laws providing for the sustenance of persons kept in prison for debt.

BREAK. "Break" may be used in a broad sense, as in seller's covenant in contract of sale of auto, to indicate a weakness, impairment, or destruction of parts, however caused. American Locomotive Co. v. National Wholesale Grocery Co., 226 Mass. 314, 115 N.E. 404, 405, L.R.A.1917D, 1125.

BREAK A LEG. Pertaining to a broken bone anywhere between ankle and hip, with possible exception of patella, 100% American Local Mut. Life & Accident Ass'n of El Paso v. Work, Tex. Civ.App., 289 S.W. 1020.

BREAK AND TAKE. Sale of merchandise or amusement where customer pays for a chattel and a chance for another unpaid for chattel, the ticket being the opportunity for fortuitous selection of a differentiated article. Minter v. Federal Trade Commission, C.C.A.3, 102 F.2d 69, 73.

BREAKAGE. Odd cents retained by race track promoter out of amounts due on wagers. Wise v. Delaware Steeplechase & Race Ass'n, Del.Super., 2 Terry 182, 18 A.2d 419, 421, 423.

BREAKDOWN SERVICE. As applied to an electric public service corporation is primarily a service for emergency and is used in case the electric plant of the customer breaks down; it is also used when very little electricity is required, as upon holidays and Sundays, and also at the peak of the service when a maximum current is required during the day. People ex rel. New York Edison Co. v. Public Service Commission for First Dist., 191 App.Div. 237, 181 N.Y.S. 259, 261.

BREAKING. Forcibly separating, parting, disintegrating, or piercing any solid substance.

In the law as to housebreaking and burglary, it means the tearing away or removal of any part of a house or of the locks, latches, or other fastenings intended to secure it, or otherwise exerting force to gain an entrance, with the intent to commit a felony; or violently or forcibly breaking out of a house, after having unlawfully entered it, in the attempt to escape. Sims v. State, 136 Ind. 358, 36 N.E. 278; Melton v. State, 24 Tex.App. 287, 6 S.W. 303. Actual "breaking" involves application of some force. Rains v. Commonwealth, 293 Ky. 429, 169 S.W.2d 41, 44, the action of accused must have been such as would, • without additional effort, have made an entry possible. Armour v. State, 72 Okl.Cr. 44, 112 P.2d 1116, 1119, but there is no requirement that there be shown violence, a latch lifted, or a

bolt drawn. People v. Viola, 264 App.Div. 38, 34 N.Y.S.2d 1018, 1020. The term in indictment, information or instruction implies force. State v. Stuart, 316 Mo. 150, 289 S.W. 822, 824; Humphrey v. State, 110 Tex.Cr.R. 62, 7 S.W.2d 576, 577; McFarland v. Commonwealth, 227 Ky. 411, 13 S.W.2d 277, 278. The slightest force is sufficient, as the lifting or opening of a latch, Dennis v. State, 71 Tex.Cr.R. 162, 158 S.W. 1008, 1010; State v. Gendusa, 193 La. 59, 190 So. 332, 339; or the raising of a window, Hollis v. State, 69 Tex.Cr.R. 286, 153 S.W. 853, 854; State v. Chappell, 185 S.C. 111, 193 S.E. 924, 925; or the opening of a door, State v. Lapoint, 87 Vt. 115, 88 A. 523, 47 L.R.A.,N.S., 717; Gibson v. Commonwealth, 204 Ky. 704, 265 S.W. 339, 345; Yeargin v. State, 54 Okl.Cr. 34, 14 P.2d 431, 432; Kidd v. Commonwealth, 273 Ky. 300, 116 S.W.2d 636, 638; or the opening of unfastened transom. State v. Chappell, 185 S.C. 111, 193 S.E. 924; or entry with a key or by manipulating hasp from outside, McGilveray v. State. 111 Tex.Cr.R. 256, 12 S.W.2d 585; or turning of knob of door, State v. Edell, 7 W.W.Harr. Del., 404, 183 A. 630. But entry by open door, window, or other opening does not constitute "breaking", George v. State, 183 Miss. 327, 184 So. 67, 68. Breaking lock securing pump handle on gasoline tank releasing handle is sufficient "breaking". Chaney v. State, 25 Ala.App. 141, 142 So. 103.

As an element of the crime of burglary breaking may be either actual or constructive. Davis v. Commonwealth, 132 Va. 521, 110 S.E. 356. Entering a building by a chimney is a constructive breaking. State v. Hart, 94 S.C. 214, 77 S.E. 862.

BREAKING A CASE. The expression by the judges of a court, to one another, of their views of a case, in order to ascertain how far they are agreed, and as preliminary to the formal delivery of their opinions. "We are breaking the case, that we may show what is in doubt with any of us." Holt, C. J., addressing Dolbin, J., 1 Show. 423.

BREAKING A CLOSE. An unlawful entry upon land. Littleton v. Roberts, 181 S.C. 303, 187 S.E. 349, 350.

Wrongdoer need only set in motion some dangerous agency which in itself, though quite distant from wrongdoer, inflicts wrong. Western Union Telegraph Co. v. Bush, 191 Ark. 1085, 89 S.W.2d 723, 725, 103 A.L.R. 367.

BREAKING BULK. The offense committed by a bailee (particularly a carrier) in opening or unpacking the chest, parcel, or case containing goods intrusted to his care, and removing the goods and converting them to his own use.

BREAKING DOORS. Forcibly removing the fastenings of a house, so that a person may enter.

BREAKING INTO. Breaking with burglarious intent. State v, Heflin, 338 Mo. 236, 89 S.W.2d 938, 946, 103 A.L.R. 1301.

BREAKING JAIL. The act of a prisoner in effecting his escape from a place of lawful confinement.

BREAKING OF ARRESTMENT. In Scotch law. The contempt of the law committed by an arrestee who disregards the arrestment used in his hands, and pays the sum or delivers the goods arrested to the debtor. The breaker is liable to the arrester in damages. See Arrestment.

BREAST OF THE COURT. A metaphorical expression signifying the conscience, discretion, or recollection of the judge.

During the term of a court, the record is said to remain "in the breast of the judges of the court and in their remembrance." Co.Litt. 260a; 3 Bl.Comm. 407. When we say that the record is in the "breast of the court" to be changed during the term, we only mean that the proceedings attested by it have not yet obtained that irrevocable character which places them beyond the power of the court after the term. Willson v. Ice, 78 W.Va. 672, 90 S.E. 272, 275.

BREATH. In medical jurisprudence. The air expelled from the lungs at each expiration.

BREATHING. Expansion and contraction, under the influence of changing temperatures, of materials used in cables for transmission of high-tension electric currents. Electric Cable Joint Co. v. Brooklyn Edison Co., N.Y., 292 U.S. 69, 54 S.Ct. 586, 587, 78 L.Ed. 1131.

BREDWITE. In Saxon and old English law. A fine, penalty, or amercement imposed for defaults in the assise of bread. Cowell.

BREED. Produce (offspring) by hatching or gestation; to hatch. Miller Hatcheries v. Boyer, C.C.A.Iowa, 131 F.2d 283, 287.

BREHON. In old Irish law. A judge. 1 Bl. Comm. 100. Brehons, *(breitheamhuin,)* judges.

BREHON LAW. The name given to the ancient system of law of Ireland as it existed at the time of its conquest by Henry II.

BRENAGIUM. A payment in bran, which tenants anciently made to feed their lords' hounds.

BREPHOTROPHI. In the civil law. Persons appointed to take care of houses destined to receive foundlings.

BRETHREN. This word, in a will, may include sisters, as well as brothers, of the person indicated; it is not necessarily limited to the masculine gender. Terry v. Brunson, 1 Rich.Eq., S.C., 78.

BRETHREN OF TRINITY HOUSE. See Elder Brethren.

BRETTS AND SCOTTS, LAWS OF THE. A code or system of laws in use among the Celtic tribes of Scotland down to the beginning of the fourteenth century, and then abolished by Edward I. of England.

BRETTWALDA. In Saxon law. The ruler of the Saxon heptarchy.

BREVE. L. Lat. A writ. An original writ.

A writ or precept of the king issuing out of his courts. A writ by which a person is summoned or attached to answer an action, complaint, etc., or whereby anything is commanded to be done in the courts, in order to justice, etc. Skene.

BREVE DE RECTO. A writ of right, or license for a person ejected out of an estate, to sue for the possession of it.

BREVE INNOMINATUM. A writ making only a general complaint, without the details or particulars of the cause of action.

BREVE ITA DICITUR, QUIA REM DE QUA AGITUR, ET INTENTIONEM PETENTIS, PAUCIS VERBIS BREVITER ENARRAT. A writ is so called because it briefly states, in few words, the matter in dispute, and the object of the party seeking relief. 2 Inst. 39.

BREVE JUDICIALE DEBET SEQUI SUUM ORIGINALE, ET ACCESSORIUM SUUM PRINCIPALE. Jenk.Cent. 292. A judicial writ ought to follow its original, and an accessory its principal.

BREVE JUDICIALE NON CADIT PRO DEFECTU FORME. Jenk.Cent. 43. A judicial writ fails not through defect of form.

BREVE NOMINATUM. A named writ. A writ stating the circumstances or details of the cause, of action, with the time, place, and demand, very particularly.

BREVE ORIGINALE. An original writ; a writ which gave *origin* and commencement to a suit.

BREVE PERQUIRERE. To purchase a writ or license of trial in the king's courts by the plaintiff.

BREVE TESTATUM. A written memorandum introduced to perpetuate the tenor of the conveyance and investiture of lands. 2 Bl.Comm. 307. In Scotch law. A similar memorandum made out at the time of the transfer, attested by the *pares curice* and by the seal of the superior. Bell.

BREVET.

In military law. A commission by which an officer is promoted to the next higher rank, but without conferring a right to a corresponding increase of pay.

In French law. A privilege or warrant granted by the government to a private person, authorizing him to take a special benefit or exercise an exclusive privilege. Thus a *brevet d'invention* is a patent for an invention.

BREVIA. Lat. The plural of *breve.*

BREVIA ADVERSARIA. Adversary writs; writs brought by an adversary to recover land. 6 Coke, 67.

BREVIA AMICABILIA. Amicable or friendly writs; writs brought by agreement or consent of the parties.

BREVIA ANTICIPANTIA. At common law. Anticipating or preventive writs. Six were included in this category, viz.: Writ of *mesne; warrantia chartce; monstraverunt; audita querela; curia claudenda;* and *ne injuste vexes.* Peters v. Linenschmidt, 58 Mo. 466.

BREVIA DE CURSU. Writs of course. Formal writs issuing as of course.

BREVIA FORMATA. Certain writs of approved and established form which were granted of course in actions to which they were applicable, and which could not be changed but by consent of the great council of the realm. Bract. fol. 413b.

BREVIA JUDICIALIA. Judicial writs. Auxiliary writs issued from the court during the progress of an action, or in aid of the judgment.

BREVIA MAGISTRALIA. Writs occasionally issued by the *masters* or clerks of chancery, the form of which was varied to suit the circumstances of each case. Bract. fol. 413b.

BREVIA SELECTA. Choice or selected writs or processes. Often abbreviated to Brev. Sel.

BREVIA, TAM ORIGINALIA QUAM JUDICIALIA, PATIUNTUR ANGLICA NOMINA. 10 Coke, 132. Writs, as well original as judicial, bear English names.

BREVIA TESTATA. The name of the short memoranda early used to show grants of lands out of which the deeds now in use have grown. Jacob.

BREVIARIUM ALARICIANUM. A compilation of Roman law made by order of Alaric II., king of the Visigoths, in Spain, and published for the use of his Roman subjects in the year 506. It is also known as *Lex Romana Visigothorum.* It became the principal, if not the only, representative of Roman law among the Franks.

BREVIARIUM ANIANI. Another name for the Brevarium Alaricianum, *(q.* v.) Anian was the referendery or chancellor of Alaric, and was commanded by the latter to authenticate, by his signature, the copies of the breviary sent to the *comites.* Mackeld. Rom. Law, § 68.

BREVIATE. A brief; brief statement, epitome, or abstract. A short statement of contents, accompanying a bill in parliament. Holthouse. The name is usually applied to the famous brief of Mr. Murray (afterwards Lord Mansfield) for the complainant in the case of Penn v. Lord Baltimore, 1 Ves. 444.

BREVIBUS ET ROTULIS LIBERANDIS. A writ or mandate to a sheriff to deliver to his successor the county, and appurtenances, with the rolls, briefs, remembrance, and all other things belonging to his office. Reg.Orig. 295.

BREWER. One who manufactures fermented liquors, for sale, from malt, wholly or in part, or from any substitute therefor. U. S. v. Wittig, 28 Fed.Cas. 745.

BRIBE. Anything of value; any gift, advantage or emolument; any price, reward or favor. State v. Douglas, 70 S.D. 203, 16 N.W.2d 489, 496. Any money, goods, right in action, property, thing of value, or any preferment, advantage, privilege or emolument, or any promise or undertaking to give any, asked, given, or accepted, with a corrupt intent to induce or influence action, vote, or opinion of person in any public or official capacity. People v. Van de Carr, 87 App.Div. 386, 84 N.Y.S. 461; People v. Ward, 110 Cal. 369, 42 P. 894; Williams v. State, 188 Ind. 283, 123 N.E. 209, 213. It *is* a

gift, not necessarily of pecuniary value, bestowed to influence the conduct of the receiver, and must be of substantial value to him. People v. Hyde, 156 App.Div. 618, 141 N.Y.S. 1089, 1093.

Payment of corporate funds by director and executive officer of the corporation to officials of labor union to prevent ruinous strikes which union officials were under no legal duty to call as "bribe". Hornstein v. Paramount Pictures, Sup., 37 N.Y.S.2d 404, 412.

BRIBERY. The offering, giving, receiving, or soliciting of any thing of value to influence action as official or in discharge of legal or public duty. Allen v. State, 63 Okl.Cr. 16, 72 P.2d 516, 519. The corrupt tendering or receiving of a price for official action. State v. London, 194 Wash. 458, 78 P.2d 548, 554, 115 A.L.R. 1255. The receiving or offering any undue reward by or to any person concerned in the administration of public justice or a public officer to influence his behavior in office. Walsh v. People, 65 Ill. 65, 16 Am.Rep. 569; State v. Harrah, 101 W.Va. 300, 132 S.E. 654, 655, 4 Bl.Comm. 139, and note. The taking or giving a reward for public office. Brown.

Acceptance by public officer of compensation for doing legal duty, Ex parte Montgomery, 244 Ala. 91, 12 So.2d 314, 317; agreement by public official to refrain from performing official act or to corruptly perform act contrary to rules of honesty essential, Selvidge v. State, 126 Tex.Cr.R. 489, 72 S.W.2d 1079, 1080; Attempt to bribe officer engaged in making an unlawful arrest, Sugarman v. State, 173 Md. 52, 195 A. 324, 326; Attempted bribery as included in term, Coleman v. State ex rel. Mitchell, 132 Fla. 845, 182 So. 627, 628; Coleman v. State ex rel. Mitchell, 132 Fla. 845, 182 So. 627, 628; "extortion" and "bribery" mutually exclusive, People v. Feld, 262 App.Div. 909, 28 N.Y.S.2d 796, 797; involuntary payments insufficient, Hornstein v. Paramount Pictures, Sup., 37 N.Y.S.2d 404, 413; unlawful concert of one or more persons acting with one or more other persons essential, People v. Keyes, Cal.Sup., 284 P. 1105; voluntary giving of something of value to influence performance of official duty as essence, Hornstein v. Paramount Pictures, Sup., 37 N.Y.S.2d 404, 413.

At common law, the gist of the offense was the tendency to prevert justice, People v. Peters, 265 Ill. 122, 106 N.E. 513, 515, Ann.Cas.1916A, 813; the offering, giving, receiving or soliciting of anything of value to influence action as a public official, Coleman v. State ex rel. Mitchell, Fla., 182 So. 627, 628; corrupt agreement induced by offer of reward, Osborn v. State, 160 Tenn. 594, 28 S.W.2d 47, 48; The term now extends_to many classes of officers and is not confined to judicial officers; it applies both to the actor and receiver, and extends to voters, cabinet ministers, legislators, sheriffs, and other classes. 2 Whart.Crim. Law, § 1858. In re Crum, 55 N.D. 876, 215 N.W. 682, 688, 55 A.L.R. 220; State v. McGraw, 142 La. 417, 76 So. 822. All persons whose official conduct is connected with the administration of the government are subjects, Commonwealth v. Benedict, 114 Pa.Super. 183, 173 A. 850, 851; persons acting under color of title to office, though not an officer de jure, are subjects, Ex parte Covell, 63 Okl. 256, 74 P.2d 626, 631; but it has also been held that the person charged to have been bribed must be an officer, de facto or de jure, or among the governmental administrative personnel. State v. London, 194 Wash. 458, 78 P.2d 548, 115 A.L.R. 1255.

BRIBERY AT ELECTIONS. The offense committed by one who gives or promises or offers money or any valuable inducement to an elector, in order to corruptly induce the latter to vote in a particular way or to abstain from voting, or as a reward 'to the voter for having voted in a particular way or abstained from voting.

BRIBOUR. One that pilfers other men's goods; a thief.

BRICOLIS. An engine by which walls were beaten down. Blount.

BRIDEWELL. In England. A house of correction.

BRIDGE. A structure erected over a river, creek, stream, ditch, ravine, obstruction in highway or other place to facilitate the passage and for benefit of travelers.

The term includes both arches and abutments; Bardwell v. Town of Jamaica, 15 Vt. 438; Andrew B. Hendryx Co. v. City of New Haven, 104 Conn. 632. 134 A. 77, 79; as well as approaches; 71 L.T. 430; McGee v. Jones County, 161 Iowa, 296, 142 N.W. 957, 959, 48 L.R.A.,N.S., 141; In re Park Lane South in City of New York, 206 App.Div. 269, 200 N.Y.S. 555, 557; *contra,* under a statute, City of Stamford v. Town of Stamford, 100 Conn. 434, 124 A. 26, 27. The term likewise includes fills or embankments, Havird v. Richmond County, 47 Ga.App. 580, 171 S.E. 220; Morgan County v. Glass, 139 Ga. 415, 77 S.E. 583; appurtenances necessary to its proper use, Lumley v. Pollard. 61 Ga.App. 681, 7 S.E.2d 308, 313; culverts; Central Bridge & Const. Co. v. Saunders County, 106 Neb. 484, 184 N.W. 220, 223; *contra,* Village of Marissa v. Jones, 327 Ill. 180, 158 N.E. 389, 394; viaducts; In re City of Boston, 221 Mass. 468, 109 N.E. 389, 392; but not a railway viaduct, designed only for the passage of engines and cars; Bridge Proprietors v. Land & Improvement Co., 1 Wall. 116, 17 L.Ed. 571; nor does the term include a drain under a bridge; Ellis v. Floyd County, 24 Ga.App. 717, 102 S.E. 181; nor a franchise or contract to build a bridge; New Orleans Pontchartrain Bridge Co. v. Louisiana Public Service Commission, 162 La. 874, 111 So. 265, 266 ; nor piping and water boxes and culverts for drainage purposes across public roads, Montgomery County v. Seaboard Air Line Ry. Co., 41 Ga. App. 130, 152 S.E. 261, 262; nor flood walls, Jefferson County Fiscal Court v. Jefferson County ex rel. Grauman, 278 Ky. 68, 128 S.W.2d 230, 232, 233; nor an elevated roadway or causeway of reinforced concrete, resting upon concrete piers or columns. Rumsey v. Department of Labor and Industries, 192 Wash. 538, 74 P.2d 214, 216.

"Bridges" and "culverts" are not synonymous. Protest of Evans, 153 Okl. 191, 4 P.2d 1030, 1031.

Bridges are either public or private. Public bridges are such as form a part of the highway, common, according to their character as foot, horse, or carriage bridges, to the public generally, with or without toll. State v. Street, 117 Ala. 203, 23 So. 807; Bonneville County v. Bingham County, 24 Idaho, 1, 132 P. 431, 433; they are bridges across a creek, river, or other natural body of water, etc., erected for the accommodation of the public, In re Walnut St. Bridge in City of Des Moines, 220 Iowa 55, 261 N.W. 781, 782. A private bridge is one which is not open to the use of the public generally, and does riot form part of the highway. Rex v. Bucks County, 12 East, 192. Such a bridge will not be considered a public bridge although it may be occasionally used by the public. Thompson v. R. Co., 3 Sandf.Ch., N.Y., 625; 1 Rolle, Abr. 368, *Bridges,* pl. 2; 2 Inst. 701; 1 Salk. 359.

BRIDGE OVER A PUBLIC WAY. A bridge upon which railroad runs above highway. Boston & M. R. R. v. Worcester County Com'rs, 300 Mass. 415, 15 N.E.2d 455, 457.

BRIDGE UNDER A PUBLIC WAY. A bridge for travelers to use as part of a highway crossing railroad over level thereof. Boston & M. R. R. v. Worcester County Com'rs, 300 Mass. 415, 15 N.E. 2d 455.

BRIDGE-MASTERS. Persons chosen by the citizens, to have the care and supervision of bridges, and having certain fees and profits belonging to their office, as in the case of London Bridge.

BRIDLE ROAD. In the location of a private way laid out by the selectmen, and accepted by the

town, a description of it as a "bridle road" does not confine the right of way to a particular class of animals or special mode of use. Flagg v. Flagg, 16 Gray, Mass., 175.

BRIEF. A written document; a letter; a writing in the form of a letter. A summary, abstract, or epitome. A condensed statement or epitome of some larger document, or of a series of papers, facts and circumstances, or propositions.

In American practice. A written or printed document, prepared by counsel to serve as the basis for an argument upon a cause in an appellate court, and usually filed for the information of the court. It embodies the points of law which the counsel desires to establish, together with the arguments and authorities upon which he rests his contention. A brief, within a rule of court requiring counsel to furnish briefs, before argument, implies some kind of statement of the case for the information of the court. Gardner v. Stover, 43 Ind. 356. A "brief" is the vehicle of counsel to convey to the appellate court the essential facts of his client's case, a statement of the questions of law involved, the law he would have applied, and the application he desires made of it by the court. Bell v. Germain, 12 Cal.App. 375, 107 P. 630. The brief of evidence in connection with an auditor's report is considered *a "brief"* though it may embody the stenographic report of the testimony in full. McKenzie v. Perdue, 67 Ga.App. 202, 19 S.E.2d 765, 774.

In Ecclesiastical law. A papal rescript sealed with wax. See Bull.

In English practice. A document prepared by the attorney, and given to the barrister, before the trial of a cause, for the instruction and guidance of the latter. It contains, in general, all the information necessary to enable the barrister to successfully conduct their client's case in court, such as a statement of the facts, a summary of the pleadings, the names of the witnesses, and an outline of the evidence expected from them, and any suggestions arising out of the peculiarities of the case.

In Scotch law. Brief is used in the sense of "writ," and this seems to be the sense in which the word is used in very many of the ancient writers.

### Brief a l'evesque

A writ to the bishop which, in *quare impedit,* shall go to remove an incumbent, unless he recover or be presented *pendente lite.* 1 Keb. 386.

### Brief of Title

A methodical epitome of all the patents, conveyances, incumbrances, liens, court proceedings, and other matters affecting the title to real estate.

### Brief Out of the Chancery

In Scotch law. A writ issued in the name of the sovereign in the election of tutors to minors, the cognoscing of lunatics or of idiots, and the ascertaining the widow's terce; and sometimes in dividing the property belonging to heirs-portioners. In these cases only brieves are now in use. Bell.

### Brief Papal

In ecclesiastical law. The pope's letter upon matters of discipline.

### Printed Brief

Typewritten brief is a written and not a "printed brief." Waterman Lumber & Supply Co. v. Holmes, Tex.Civ.App., 161 S.W. 70.

BRIEFLY. Concisely; in a few words; pertaining to a short or abridged statement. Boynton Real Estate Co. v. Woodbridge Tp., 94 N.J.Law, 226, 109 A. 514, 515.

BRIEVE. In Scotch law. A writ. 1 Kames, Eq. 146.

BRIGA. In old European law. Strife, contention, litigation, controversy.

BRIGANDINE. A coat of mail or ancient armour, consisting of numerous jointed scale-like plates, very pliant and easy for the body, mentioned in 4 & 5 P. & M. c. 2.

BRIGBOTE, In Saxon and old English law. A tribute or contribution towards the repairing of bridges. See Bote.

BRINE. A solution 4 per cent. salt is brine, within the meaning of the provision of paragraph 488, Free List, Tariff Act of 1913, for "fruits in brine." Amerman & Patterson v. U. S., 12 Ct.Cust.App. 117, 118.

BRING. To convey to the place where the speaker is or is to be, to bear from a more distant to a nearer place, to make to come, procure, produce, draw to, to convey, carry or conduct, move. Frederick v. Great Northern Ry. Co., 207 Wis. 234, 240 N.W. 387, 390. The doing of something effectual; the bringing of someone to account, or the accomplishment of some definite purpose. Landrum v. Fulton, 47 Ohio App. 376, 191 N.E. 917, 918.

BRING ABOUT. To procure, implies completion. Jackson v. Thompson, Tex.Civ.App., 74 S.W.2d 1055, 1057.

BRING INTO. To import, U. ,S. v. Gully, D.C.N. Y., 9 F.2d 959; to introduce, Sturgeon v. State, 17 Ariz. 513, 154 P. 1050, 1055, L.R.A.1917B, 1230.

BRING SUIT. To "bring" an action or suit has a settled customary meaning at law, and refers to the initiation of legal proceedings in a suit. Lake & Co. v. King County, 4 Wash.2d 651, 104 P.2d 599, 601. A suit is "brought" at the time it is commenced. Hames v. Judd, Com.Pl., 9 N.Y.Supp. 743, 30 St.R. 666, 16 Daly 110; Goldenberg v. Murphy, 108 U.S. 162, 2 Sup.Ct. 388, 27 L.Ed. 686; Buecker v. Carr, 60 N.J.Eq. 300, 47 Atl. 34. "Brought" and "commenced" in statutes of limitations are commonly deemed to have been used interchangeably. Hannaman v. Gordon, Tex.Com. App., 261 S.W. 1006, 1008. Under such statutes, the suit may be "brought," when the summons subsequently served is issued. Mill Creek & Minehill Nav. & R. Co. v. United States, D.C.Pa., 246 F. 1013, 1016. Under a statute providing that no action shall be "brought or maintained", "brought" applies to actions not yet instituted. Bruenn v. North Yakima School Dist. No. 7, Yakima County, 101 Wash. 374, 172 P. 569, 571. "Institute and prosecute" and "bring suit" as synonymous. Traders & General Ins. Co. v. Spillers, Tex.Civ.App., 88 S.W.2d 738, 740.

BRING UP. Nurse, rear, and educate child until full age. In re Bamber's Estate, 147 Misc. 712, 265 N.Y.S. 798.

BRINGING ACTION TO TRIAL. Motion to reset case for trial as "bringing action to trial". Craghill v. Ford, 127 Cal.App. 661, 16 P.2d 343, 346.

BRINGING ERROR. Writ of error is considered as brought at time it is filed in court which renders judgment. Girard Fire & Marine Ins. Co. v. Commonwealth Building & Loan Ass'n, C.C.A. Tex., 32 F.2d 736.

BRINGING MONEY INTO COURT. The act of depositing money in the custody of a court or of its clerk or marshal, for the purpose of satisfying a debt or duty, or to await the result of an interpleader. Dirks v. Juel, 59 Neb. 353, 80 N.W. 1045.

BRIS. In French maritime law. Literally, breaking; wreck. Distinguished from *naufrage, (q. v.).*

BRISTOL BARGAIN. In English law. A contract by which A. lends B. £1,000 on good security, and it is agreed that £500, together with interest, shall be paid at a time stated; and, as to the other £500, that B., in consideration thereof, shall pay to A. £100 *per annum* for seven years. Wharton.

BRITISH COLUMBIA. The territory on the north-west coast of North America, once known by the designation of "New Caledonia." Its government is provided for by 21 & 22 Vict. c. 99. Vancouver Island is united to it by the 29 & 30 Vict. c. 67. See 33 & 34 Vict. c. 66.

BRITISH SUBJECT. Any person owing permanent allegiance to crown. U. S. ex rel. Graber v. Karnuth, C.C.A.N.Y., 30 F.2d 242, 243.

BRITISH THERMAL UNIT. The amount of heat required to raise a pound of water one degree Fahrenheit. Shawnee Gas & Electric Co. v. Corporation Commission of Oklahoma, 111 Okl. 13, 237 P. 844.

BROAD INTERPRETATION. That interpretation of Constitution or statute which, brushing aside minor objections and trivial technicalities, effectuates intent of act. In re Senate Resolution No. 2 Concerning Constitutionality of House Bill No. 6, 94 Colo. 101, 31 P.2d 325, 332.

BROCAGE. The wages, commission, or pay of a broker (also called "brokerage"). Also the avocation or business of a broker.

BROCARD. In old English law. A legal maxim. "Brocardica Juris," the title of a small book of legal maxims, published at Paris, 1508.

BROCARIUS, BROCATOR. In old English and Scotch law. A broker; a middleman between buyer and seller; the agent of both transacting parties. Bell; Cowell.

BROCELLA. In old English law. A wood, a thicket or covert of bushes and brushwood. Cowell; Blount.

BROKEN. Impoverishment. Walsh *v.* Kennedy, 115 Mont. 551, 147 P.2d 425, 430.

BROKEN STOWAGE. In maritime law. That space in a ship which is not filled by her cargo.

BROKER. An agent employed to make bargains and contracts for a compensation. Story, Ag. 28; Payne v. Ponder, 139 Ga. 283, 77 S.E. 32, 34. A dealer in securities issued by others. White v. Financial Guarantee Corporation, 13 Cal.App.2d 93, 56 P.2d 550, 553. A middleman or negotiator between parties. San Jacinto Life Ins. Co. *v.* Brooks, Tex.Civ.App., 274 S.W. 648, 650; Messick v. Johnson, 155 Okl. 139, 8 P.2d 28, 30; Gile v. Tsutakawa, 109 Wash. 366, 187 P. 323, 326; Civil Code La. art. 3016. A person dealing with another for sale of property. Davis *v.* Chipman, 210 Cal. 609, 293 P. 40, 44. A person whose business it is to bring buyer and seller together. Keys v. Johnson, 68 Pa. 42. The term extends to almost every branch of business, to realty as well as personalty. Richmond Mortgage & Loan Corporation v. Rose, 142 Va. 342, 128 S.E. 604, 605.

A voyage is called a "broker" where no fish are caught on a fishing voyage or from some other reason there are no proceeds from a fish auction. The Dirigo First, D.C.Mass., 60 F.Supp. 675.

For distinction between "commission merchant" and "broker," see Commission Merchant. For "Factor" and "broker" as synonymous or distinguishable, see Factor.

Ordinarily, the term is applied to one acting for others but is applicable to one in business of negotiating purchases or sales for himself. McCornick & Co., Bankers, v. Tolmie Bros., 42 Idaho 1, 243 P. 355, 358; Johnson v. Winslow, 155 Misc. 170, 279 N.Y.S. 147.

A "broker" is an agent with special and limited authority. Stephenson v. Golden, 279 Mich. 710, 276 N.W. 849, 858; Portsmouth Cotton Oil Refining Corp. v. Madrid Cotton Oil Co., 200 Ala. 634, 77 So. 8, 9. A middleman, as distinguished from a broker, is employed merely to bring the parties together when each desires to exchange his property for that of the other, or where one desires to sell and the other to purchase and his services are not rendered as the agent of either party; but a "broker" is the agent of a party, employed to procure a customer or to effect the sale or exchange. Tracey v. Blake, 229 Mass. 57, 118 N.E. 271, 272.

Brokers are of many kinds, the most important being enumerated and defined as follows:

Exchange Broker

See Exchange Broker.

Merchandise Brokers

Buyers and sellers of goods and negotiators between buyer and seller, but without having the custody of the property.

Money-Broker

A money-changer; a scrivener or jobber; one who lends or raises money to or for others.

Note Brokers

Negotiators of the discount or sale of commercial paper.

Pawnbrokers

Lenders of money on goods deposited with them in pledge, taking high rates of interest.

Real Estate Brokers

Persons who procure the purchase or sale of land, acting as intermediary between vendor and purchaser, and who negotiate loans on real-estate security, manage and lease estates, etc. Latta v. Kilbourn, 150 U.S. 524, 14 S.Ct. 201, 37 L.Ed. 169; Abraham v. Wasaff, 111 Okl. 138, 239 P. 138, 140. A broker employed in negotiating the sale, purchase, or exchange of lands on a commission contingent on success. Oregon Home Builders v. Montgomery Inv. Co., 94 Or. 349, 184 P. 487, 491. A person engaged in business to such an extent that it is his vocation or partial vocation. Morris v. O'Neill, 239 Mich. 663, 215 N.W. 8, 9; Kolb v. Burkhardt, 148 Md. 539, 129 A. 670, 672.

Ship-Brokers

Who transact business between the owners of ships and freighters or charterers, and negotiate the sale of vessels.

Stock. Brokers

Brokers employed to buy and sell for their principals stocks, bonds, government securities, etc. The term "broker" applies as well to a broker on the Board of Trade as to one on the Stock Exchange. Cutler v. Pardridge, 182 Ill.App. 350, 358.

BROKERAGE. The wages or commissions of a broker; also, his business or occupation.

BROKERAGE CONTRACT. A contract of agency, whereby broker is employed to make contracts of kind agreed upon in name and on behalf of his principal, and for which he is paid an agreed commission. Nolen's Adm'r v. Robinson, 213 Ky. 752, 281 S.W. 1034, 1036; Hardesty v. Martin Ebersbach Co., C.C.A.Ohio, 294 F. 5, 6. A unilateral contract wherein the principal makes an offer which is interpreted as promise to pay broker a commission in consideration of his producing a buyer ready, able, and willing to buy the property on the principal's terms. In re Cowan's Estate, Sur., 13 N,Y.S.2d 374, 376.

BROSSUS. Bruised, or injured with blows, wounds, or other casualty. Cowell.

BROTHEL. A bawdy-house; a house of ill fame; a common habitation of prostitutes. United States v. Casey, D.C.Ohio, 247 F. 362, 364.

BROTHER. One person is a brother "of the whole blood" to another, the former being a male, when both are born from the same father and mother. He is a brother "of the half blood" to that other (or half-brother) when the two are born to the same father by different mothers or by the same mother to different fathers.

The term may embrace half brothers. Thompson v. Smith, 102 Okl. 150, 227 P. 77, 80; Darson v. Moore, 163 Miss. 705, 142 So. 447, 452. It may be deemed to embrace only a blood brother. Droney v. U. S., D.C.D.C., 59 F. Supp. 154, 155

In the civil law, the following distinctions are observed : Two brothers who descend from the same father, but by different mothers, are called "consan[g]uine" brothers. If they have the same mother, but are begotten by different fathers, they are called "uterine" brothers. If they have both the same father and mother, they are denominated brothers "germane."

BROTHER-IN-LAW. A wife's brother or a sister's husband. There is not any relationship, but only affinity, between brothers-in-law. Farmers' L. & T. Co. v. Iowa Water Co., C.C., 80 Fed. 46g. See State v. Foster, 112 La. 533, 36 So. 554. Two men are not brothers-in-law from the circumstance merely of having married sisters. Cruce v. State, 87 Fla. 406, 100 So. 264, 265.

BROTHERHOOD AND GUESTLING, COURT OF. The Brotherhood was a conference of seven towns (i. e., the Cinque Ports and two other ancient towns) as to the provision of the necessary ships and as to arranging for the herring sale at Yarmouth, and for other such purposes. The Guestling was rather a wider meeting, at which not merely the Brotherhood, but deputies from other associated towns were present for the discussion of subjects of common interest to all.

BROUGHT. Taken; carried. United States v. Townsend, D.C.N.Y., 219 F. 761, 762. Past tense of "bring." Frederick v. Great Northern Ry. Co., 207 Wis. 234, 240 N.W. 387, 390, 80 A.L.R. 984.

A proceeding is not "brought" as regards defendant until process has been issued from an appropriate court in good faith intending or making an effort to serve it. City of Revere v. Special Judge of Dist. Court of Chelsea, 262 Mass. 393, 160 N.F. 431, 433. A writ of error is not -brought" until it is filed or lodged in the court, or with the clerk of the court, which rendered the judgment. U. S. v. Shaffer, D.C.Wash., 278 F. 549, 531.

BROUGHT IN QUESTION UPON THE RECORD. The constitutionality of an act is "brought in question upon the record" when it is clearly questioned by the allegation of any pleading, or by any other formal objection filed in the case. Brosco v Frost, 63 R.I. 1, 6 A.2d 705, 706.

BROUGHT TO THE ATTENTION OF. Equivalent to the expression "made known to." State v. Sullivan, 159 La. 589, 105 So. 631, 636.

BROUGHT TO TRIAL. An action is not brought to trial until the trial is commenced. Miller & Lux v. Superior Court of California in and for Merced County, 192 Cal. 333, 219 P. 1006, 1009.

BROWN DECREE. A decree which terminates marriage without specifying in whose favor issue as to grounds for divorce was decided. Spector v. Spector, 382 P.2d 659, 666, 94 Ariz. 175.

BRUARIUM. In old English law. A heath grQund; ground where heath grows. Spelman.

BRUGBOTE. See Brigbote.

BRUILLUS. In old English law. A wood or grove; a thicket or clump of trees in a park or forest. Cowell.

BRUISE. In medical jurisprudence. A contusion; an injury upon the flesh of a person with a blunt or heavy instrument, without solution of continuity, or without breaking the skin. Shadock v. Road Co., 79 Mich. 7, 44 N.W. 158. See Contusion.

BRUKBARN. In old Swedish law. The child of a woman conceiving after a rape, which was made legitimate. Literally, the child of a struggle. Burrill.

BRUSHING. Digging of space in middle of bottom of mine entry or room neck in which to lay track. Schillings v. Big Creek Coal Co., Mo.App. 277 S.W. 964, 965.

BRUTUM FULMEN. An empty noise; an empty threat. A judgment void upon its face which is in legal effect no judgment at all, and by which no rights are divested, and from which none can be obtained, and neither binds nor bars anyone. Dollert v. Pratt-Hewit Oil Corporation, Tex.Civ.App., 179 S.W.2d 346, 348.

BS. Impurities in crude oil. Crude Oil Contracting Co. v. Insurance Co. of North America, C.C.A.Okl., 118 F.2d 476.

B.T.U. "British Thermal Units." Bennett v. Piscitello, 170 Misc. 177, 9 N.Y.S.2d 69, 71.

BUBBLE. An extravagant or unsubstantial project for extensive operations in business or commerce, generally founded on a fictitious or exaggerated prospectus, to ensnare unwary investors. Companies formed on such a basis or for such purposes are called "bubble companies." The term is chiefly used in England.

BUBBLE ACT. The statute 6 Geo. I. c. 18 (1719), "for restraining several extravagant and unwarrantable practices herein mentioned," prompted by the collapse of the "South Sea Project." It was mostly repealed by the statute 6 Geo. IV. c. 91.

BUCK SWAMPER. An employee of lumber company to mark timber and brush in a wooded area to be cut later for the formation of a road. Demasters v. State Compensation Com'r, 112 W.Va. 498, 165 S.E. 667.

BUCKET SHOP. An office or place (other than a regularly incorporated or licensed exchange) where persons engage in pretended buying and selling of commodities. Connor v. Black, 119 Mo. 126, 24 S.W. 184; Gatewood v. North Carolina, 203 U.S. 531, 27 S.Ct. 167, 51 L.Ed. 305.

BUCKETING. Receipt of orders to purchase and sell stock without intention of executing orders and without execution of orders. Kaiser v. Butchart, 200 Minn. 545, 274 N.W. 680, 683, 113 A.L.R. 847.

BUCK'S EXTENSION PROCESS. Some uniform, continuous force or pull applied to leg or foot below break to overcome natural contraction of muscles of thigh. Sweet v. Douge, 145 Wash. 142, 259 P. 25. See Counterextension.

BUCKSTALL. A toil, net, or snare, to take deer. 4 Inst. 306.

BUDGET. A balance sheet or statement of estimated receipts and expenditures. Appalachian Electric Power Co. v. City of Huntington, 115 W. Va. 588, 177 S.E. 431, 433; a plan or method whereby expenditures are controlled. Kistler v. Carbon County, 154 Pa.Super. 299, 35 A.2d 733, 735; An estimate. Board of Sup'rs of Chesterfield County v. Chesterfield County School Board, 182 Va. 266, 28 S.E.2d 698, 703.

A name given in England to the statement annually presented to parliament by the chancellor of the exchequer, containing the estimates of the national revenue and expenditure.

BUDGET SYSTEM. A system by which income and expenditure for definite period are balanced. Rowe v. Stanley County, 52 S.D. 516, 219 N.W. 122, 123,

BUFFER. A contrivance to mitigate the shock by cars coming together rather than a safety appliance; an elastic apparatus for deadening the jar caused by the collision of bodies. George v. Atchison, T. & S. F. Ry. Co., 102 Kan. 774, 178 P. 403, 404.

"Agency," "adjunct," "branch," "instrumentality," "dummy," "tool" and "buffer" as synonymous. Lowendahl v. Baltimore & 0. R. Co., 247 App.Div. 144, 287 N.Y.S. 62, 74.

BUFFET. A public place for lunch or light refreshments. McCormick v. Brennan, 224 Ill.App. 251, 254.

BUG. Vibrating horizontal arm for the semi-automatic production of code dots, as distinguished from the Morse key. Vibroplex Co. v. J. H. Bunnell & Co., D.C.N.Y., 13 F.2d 528.

BUGGERY. A carnal copulation against nature; a man or a woman with a brute beast, a man with a man, or man unnaturally with a woman. 3 Inst. 58; 12 Coke, 36. Ausman v. Veal, 10 Ind. 356, 71 Am.Dec. 331; Com. v. J., 21 Pa.Co.Ct.R. 626. This term is often used interchangeably with "sodomy"; but even when so used, it does not necessarily include the act called "fellatio" or "fellation." State v. Murry, 136 La. 253, 66 So. 963, 964. See Sodomy.

BUILD. To construct and raise anew. Attorney General ex rel. Gibson v. Board of Sup'rs of Montcalm County, 141 Mich, 590, 104 N.W. 792, 794. To form by uniting materials into a regular structure. United States v. Blair, C.C.N.Y., 190 F. 372, 374. The term may also be employed in the sense of obtain, secure, or acquire. Verner v. Muller, 89 S.C. 545, 72 S.E. 393.

"Build" is not synonymous with amend, repair, or maintain. State v. White, 16 R.I. 591, 18 A. 179; Hutchinson v. City of Olympia, 2 Wash.T. 314, 5 P. 606, 608. But it has been held that a grant of power to build a railroad, or a requirement that certain persons shall build bridges, may include the power or duty of maintenance or repair. Central R. Co. v. Collins, 40 Ga. 582, 624; Franklin County Com'rs v. White Water Valley Canal Co., 2 Ind. 162, 163.

BUILDER. One whose occupation is the building or erection of structures, the controlling and di-

recting of construction, or the planning, constructing, remodeling and adapting to particular uses buildings and other structures. Turner v. Haar, 114 Mo. 335, 21 S.W. 737, 738. One who puts a structure into permanent form. Kansas City Southern Ry. Co. v. Wallace, 38 Okl. 233, 132 P. 908, 911, 46 L.R.A.,N.S., 112. One who builds. Hopkins v. Department of Labor and Industries, 190 Wash. 251, 67 P.2d 872, 875. The term may be synonymous with "contractor." State v. Clark, 43 Wash. 664, 86 P. 1067. It may also designate a shipwright, a mason, etc., and likewise an architett. Savannah & C. R. Co. v. Callahan, 49 Ga. 506, 511. *Contra,* as to "architect," People ex rel. v. Lower, 251 Ill. 527, 96 N.E. 346, 347, 36 L.R.A. 1203.

BUILDING. An edifice. State v. Ornelas, 42 N.M. 17, 74 P.2d 723, 725; People v. Chase, 117 Cal.App.Supp. 775, 1 P.2d 60, 61; A structure. State v. Ornelas, 42 N.M. 17, 74 P.2d 723, 725. A fabric built or constructed. State v. Ornelas, 42 N.M. 17, 74 P.2d 723, 725. That which is built. Brown v. Sikes, 188 S.C. 288, 198 S.E. 854, 856; People v. Chase, 117 Cal.App.Supp. 775, 1 P.2d 60, 61.

A fabric or edifice designed to stand more or less permanently. Brown v. Sikes, 188 S.C. 288, 198 S.E. 854, 856; a fabric, structure, or edifice, designed for the habitation of men or animals or for the shelter of property. People v. Gillespie, 344 Ill. 290, 176 N.E. 316, 318. A structure or edifice erected by man, composed of stone, wood, brick, marble or other proper substance, and intended for use or convenience. State v. Crouse, 117 Me. 363, 104 A. 525, 526; Sacks v. Legg, 219 Ill.App. 144, 147; Rabb v. W. P. Ellison, Inc., 89 N.J.Law, 416, 99 A. 119, 120. A structure or edifice inclosing a space within its walls, and usually, but not necessarily, covered with a roof. State v. Elliott, 198 Iowa 71, 199 N.W. 270, 271; Netter v. Scholtz, 282 Ky. 493, 138 S.W.2d 951, 953.

"Erecting" as synonym. Board of Com'rs of Guadalupe County v. State, 43 N.M. 409, 94 P.2d 515, 516, 520; "premises" as synonym. Everett v. Patrons' & Farmers' Mut. Fire Ins. Co. of Jackson County, 222 Mo.App. 1010, 7 S.W.2d 463, 468.

The term generally, though not always, implies the idea of a habitation for the permanent use of man, or an erection connected with his permanent use. Rouse v. Catskill & N. Y. Steamboat Co., 13 N.Y.S. 126, 127, 35 N.Y.St.Rep. 491; It imports tangibility, Wells Fargo & Co. v. Jersey City, D.C.N.J., 207 F. 871, 876, and may include the land on which it stands, as well as adjacent land, Thomas v. Long, 182 Iowa, 859, 166 N.W. 287, 288; Dallas Land & Loan Co. v. Garrett, Tex.Civ.App., 276 S.W. 471, 473; Freedman v. S. S. Kresge Co., 290 Mass. 114, 194 N.E. 829, 830. It includes many different kinds of structures and edifices. Great Eastern Casualty Co. v. Blackwelder, 21 Ga.App. 586, 94 S.E. 843, 844. The identity or difference of meaning of the words "building," "improvement" and "structure" depends upon context in connection with which they are used. -Lanier v. Lovett, 25 Ariz. 54, 213 P. 391, 394.

A ship as building within gambling statute. People v. Chase, 117 Cal.App.Supp. 775, 1 P.2d 60, 61.

BUILDING A FIRE. "Kindling a fire" and "building a fire" are equivalent. State v. Merrill, 132 Me. 103, 167 A. 172, 173.

BUILDING AND LOAN ASSOCIATION. An organization for the purpose of accumulating a fund by subscriptions and savings of its members to assist them in building or purchasing for themselves dwellings or real estate by the loan to them of the requisite money. McCauley v. Association, 97 Tenn., 13 Pickle, 421, 37 S.W. 212, 213, 35 L.R.A. 244; Rhodes v. Missouri Savings & Loan Co., 173 Ill. 621, 50 N.E. 998, 1000, 43 L.R.A. 93. A juristic person organized by government to accomplish certain ends, which may be public or quasi public. Hopkins Federal Savings & Loan Ass'n v. Cleary, Wis., 296 U.S. 315, 56 S.Ct. 235, 80 L.Ed. 251, 100 A.L.R. 1403. Quasi public corporations chartered to encourage thrift and promote ownership of homes. Hopkins Federal Savings & Loan Ass'n v. Cleary, Wis., 296 U.S. 315, 56 S.Ct. 235, 237, 241, 80 L.Ed. 251, 100 A.L.R. 1403.

A private corporation designed for the purpose of accumulating into its treasury, by means of the gradual payment by its members of their stock subscriptions in periodical installments, a fund to be invested *from time* to time in advances made to such shareholders on their stock as may apply for this privilege on approved security, the borrowing members paying interest and a premium for this preference in securing an advancement over other members, and continuing to pay the regular installments on their stock in addition, all of which funds, together with payments made by the nonborrowing members, including fines, forfeitures, and other like revenues, go into the common fund until it, with the profits thereon, aggregates the face value of all the shares in the association, the legal effect of which is to extinguish the liability incurred for the loans and advancements, and to distribute to each nonborrowing member the par value of his stock. Washington Nat. Building, Loan & Investment Ass'n v. Stanley, 38 Or. 319, 63 P. 489, 492, 84 Am.St.Rep. 793. See, also, Wilkinson v. Mutual Bldg. & Sa[y]. Ass'n, C.C.A. Wis., 13 F.2d 997, 998.

BUILDING IS COVERED. The words ordinarily mean that the property shall be insured in the standard form of insurance from that instant for a reasonable time until either the policy or policies can be written out, or their issuance approved or disapproved or some other temporary impediment to the complete formal contract of insurance can be removed. Shumway v. Home Fire & Marine Ins. Co. of California, 301 Mass. 391, 17 N.E.2d 212, 214.

BUILDING LEASE. A lease of land for a long term of years, usually 99, at a rent called a "ground rent," the lessee covenanting to erect certain edifices thereon according to specification, and to maintain the same, etc., during the term.

BUILDING LIEN. The statutory lien of a material-man or contractor for the erection of a building. June v. Doke, 35 Tex.Civ.App. 240, 80 S.W. 406.

BUILDING LINE. A line established by municipal authority, to secure uniformity of appearance in the streets of the city, drawn at a certain uniform distance from the curb or from the edge of the sidewalk, and parallel thereto, upon which the fronts of all buildings on that street must be placed, or beyond which they are not allowed to project. See Tear v. Freebody, 4 C.B.,N.S., 263.

As used in a city charter authorizing the establishment of a "building line" along boulevards, the term means *a* mark of division or demarkation; an outline or contour; a limit or boundary ;-not a straight line. City of St. Louis v. Handlan, 242 Mo. 88, 145 S.W. 421, 422, 423. As to the meaning of the term in town and city plats, see Simpson v. Mikkelsen, 196 Ill. 575, 63 N.E. 1036, 1037.

BUILDING LOAN AGREEMENT. An agreement by which one undertakes to advance to another

money to be used primarily in erection of buildings. York Mortg. Corporation v. Clotar Const. Corporation, 254 N.Y. 128, 172 N.E. 265, 269.

BUILDING MATERIAL. Material used in construction work. Wood Preserving Corporation v. State Tax Commission, 235 Ala. 438, 179 So. 254, 255. Material essential to erection or construction of house or other structure, Mutual Lumber Co. v. Sheppard, Tex.Civ.App., 173 S.W.2d 494, 497, 498, 500.

BUILDING OR STRUCTURE USED AS CHURCH. A building wholly dedicated to purposes of religious worship. Miles v. McKinney, 174 Md. 551, 199 A. 540, 547, 117 A.L.R. 207.

BUILDING PERMIT. A permit to erect a building. Commissioners of Easton v. Covey, 74 Md. 262, 22 A. 266; Commonwealth v. Devlin, 305 Pa. 440, 158 A. 161, 163.

BUILDING RESTRICTIONS. Covenants creating easement running with land in each deed containing restrictions. Strauss v. J. C. Nichols Land Co., 327 Mo. 205, 37 S.W.2d 505, 508.

BUILDING SITE. As used in contract, for filling of the "building site" to grade, term contemplated the entire lot. Myevre v. Liberty Realty & Securities Co., 156 La. 496, 100 So. 694, 696.

BUILDING SOCIETY. An association in which the subscriptions of the members form a capital stock or fund out of which advances may be made to members desiring them, on mortgage security.

BUL. In the ancient Hebrew chronology, the eighth month of the ecclesiastical, and the second of the civil year. It has since been called *"Marsh-evan,"* and answers to our October.

BULK. Unbroken packages. Merchandise which is neither counted, weighed, nor measured. See Texas & P. Ry. Co. v. Gate City Fertilizer Co., Tex.Civ.App., 176 S.W. 868, 869.

Bulk is said of that which is neither counted, weighed, nor measured. A sale by the bulk is the sale of a quantity such as it is, without measuring, counting, or weighing. Civil Code La. art. 3556, par. 6.

When used in relation to sale of goods by sample, "bulk" means the whole quanti,,' of goods sold, which is supposed to be fairly represented by the sample. American Paper Products Co. v. Morton Salt Co., Mo.App., 279 S.W. 761, 763. This is the meaning which the word has as used in Uniform Sales Act Pa. § 14, P.L. c. 543; 69 P.S. § 123, *F.* A. D. Andrea, Inc., v. Dodge, C.C.A.Pa., 15 F.2d 1003, 1005.

BULK SALES ACTS. A class of statutes designed to prevent the defrauding of creditors by secret sale in bulk of all or substantially all of a merchant's stock of goods. A. J. Long Cigar & Grocery Co. v. Harvey, 33 Ga.App. 236, 125 S.E. 870; Wolfe v. Bellfair Hat Co., Sup., 47 N.Y.S.2d 908, 910.

BULK WINDOWS. "Bulk windows" include show windows as well as bay windows, sometimes called "bow windows," within a statute conferring on cities the power to regulate certain obstructions in the street. City of Baltimore v. Nirdlinger, 131 Md. 600, 102 A. 1014, 1019.

BULL. In ecclesiastical law. An instrument granted by the pope of Rome, and sealed with a seal of lead, containing some decree, commandment, or other public act, emanating from the pontiff. Bull, in this sense, corresponds with edict or letters patent from other governments. Cowell; 4 Bl.Comm. 110; 4 Steph.Comm. 177, 179.

There are three kinds of apostolical rescripts—the *brief,* the *signature,* and the *bull;* which last is most commonly used in legal matters.

This is also a cant term of the Stock Exchange, meaning one who speculates for a rise in the market.

BULL AND BOAR. These animals, by the ancient custom of some places, were required to be kept by the parson for the use of his parishioners, in consideration of his having tithes of calves and pigs. 1 Rolle Abr. 559.

BULLDOZER. A blade, the arms of which are fastened to a tractor and hold the blade in front of the tractor. Eldredge v. Sargent, 150 Kan. 824, 96 P.2d 870, 871.

BULL-HEADED. Headstrong, obstinate, stupidly stubborn. Enloe v. Southern Ry. Co., 179 N.C. 83, 101 S.E. 556, 558.

BULL PEN. A certain place of confinement at a penitentiary. State v. Kelley, 118 Or. 397, 247 P. 146, 148.

BULLA. A seal used by the Roman emperors, during the lower empire; it was of four kinds,—gold, silver, wax, and lead.

BULLET. Synonymous with "shot," meaning a projectile, particularly a solid ball or bullet that is not intended to fit the bore of a piece. Green v. Commonwealth, 122 Va. 862, 94 S.E. 940, 941.

BULLETIN. An officially published notice or announcement concerning the progress of matters of public importance. In France, the registry of the laws.

BULLETIN DES LOIS. In France, the official sheet which publishes the laws and decrees; this publication constitutes the promulgation of the law or decree.

BULLION. Gold and silver intended to be coined.

The term is usually applied to a quantity of these metals ready for the mint, but as yet lying in bars, plates, lumps, or other masses ; but it may also include ornaments or dishes of gold and silver, or foreign coins not current as money, when intended to be descriptive of its adaptability to be coined, and not of other purposes to which it may be put. Thalheim v. State, 38 Fla. 169, 20 So. 938. The term may import money. Emery Bird Thayer Dry Goods Co. *v.* Williams, C.C.A.Mo., 98 F.2d 166, 171.

BULLION FUND. A fund of public money maintained in connection with the mints, for the purpose of purchasing precious metals for coinage, and also of enabling the mint to make returns of coins to private depositors of bullion without waiting until such bullion is actually coined.

BUM-BAILIFF. A person employed to dun one for a debt; a bailiff employed to arrest a debtor. Probably a vulgar corruption of "bound-bailiff" *(q. v.).*

BUNCO GAME. Any trick, artifice, or cunning calculated to win confidence and to deceive, whether by conversation, conduct, or suggestion. State v. Ferrato, 72 Wash. 112, 129 P. 898, 899.

BUNDA. In old English law. A bound, boundary, border, or limit *(terminus, limes).*

BUNDLE, *v.* To sleep on the same bed without undressing; applied to the custom of a man and woman, especially lovers, thus sleeping. A. & E. Ency. This custom is adverted to in Seagar v. Sligerland, 2 Caines, N.Y., 219, and Hollis v. Wells, 3 Clark, Pa., 169.

BUOY. In maritime law. A piece of wood or cork, or a barrel, raft, or other thing, made secure and floating upon a stream or bay, intended as a guide and warning to mariners, by marking a spot where the water is shallow, or where there is a reef or other danger to navigation, or to mark the course of a devious channel. Buoys are regulated by federal legislation; see 14 U.S.C.A. § 87.

BURDEN. A burden, as on interstate commerce, means anything that imposes either a restrictive or onerous load upon such commerce. State of Missouri v. Kansas Natural Gas Co., D.C.Mo., 282 F. 341, 345.

Where the Railroad Commission ordered construction of a viaduct carrying a street over railroad tracks, construction and operation of street car tracks on the viaduct was not an "additional burden," and did not entitle abutting owners to damages. In eminent domain or condemnation proceedings see In re Ely Ave. in City of New York, 88 Misc. 320, 150 N.Y.S. 698, 701.

BURDEN OF PROOF. (Lat. *onus probandi.)* In the law of evidence. The necessity or duty of affirmatively proving a fact or facts in dispute on an issue raised between the parties in a cause. Willett v. Rich, 142 Mass. 356, 7 N.E. 776, 56 Am. Rep. 684; People v. McCann, 16 N.Y. 58, 69 Am. Dec. 642, 15 How.Pr. 503.

The term "burden of proof" is not to be confused with *"prima facie* case," Kendall v. Brownson, 47 N.H. 200; Carver v. Carver, 97 Ind. 511, or with expressions referring to a similar idea, such as the "burden of evidence," Hyer *v.* C. E. Holmes & Co., 12 Ga.App. 837, 79 S.E. 58, 60, or "the burden of proceeding," Mason v. Geist, Mo.App., 263 S.W. 236, 237, or the burden of going forward with the evidence, First Nat. Bank v. Ford, 30 Wyo. 110, 216 P. 691, 694, 31 A.L.R. 1441.

It is frequently said, however, to have two distinct meanings : (1) the duty of producing evidence as the case progresses, and (2) the duty to establish the truth of the claim by preponderance of the evidence, and though the former may pass from party to party, the latter rests throughout upon the party asserting the affirmative of the issue. Sellers v. Kincaid, 303 Ill. 216, 135 N.E. 429, 433; Stofer v. Dunham, Mo.App., 208 S.W. 641, 644,

Again "burden of proof" is sometimes used to refer merely to the rule of practice fixing the order of proof, as distinguished from the "preponderance of the evidence" meaning the weight of evidence. Thompson v. Dyson, 120 Kan. 591, 244 P. 867, 868.

BUREAU. An office for the transaction of business. A name given to the several departments of the executive or administrative branch of government, or their divisions. In re Strawbridge, 39 Ala. 375; In re McLaughlin, 124 Misc. 766, 210 N.Y.S. 68, 72.

As applied to a division of an administrative department, the term may include the operating force. People v. Coffin, 202 Ill. App. 100.

BUREAUCRACY. A system in which the business of government is carried on in departments, each under the control of a chief, in contradistinction from a system in which the officers of government have a co-ordinate authority.

BURG, BURGH. A term anciently applied to a castle or fortified place; a borough *(q. v.).* Spelman.

BURGAGE. A name anciently given to a dwelling-house in a borough town. Blount.

BURGAGE-HOLDING. A tenure by which lands in royal boroughs in Scotland were held of the sovereign. The service was watching and warding, and was done by the burgesses within the territory of the borough, whether expressed in the charter or not.

BURGAGE-TENURE. In English law. One of the three species of free socage holdings; a tenure whereby houses and lands which were formerly the site of houses, in an ancient borough, are held of some lord by a certain rent. There are a great many customs affecting these tenures, the most remarkable of which is the custom of Borough English. See Litt. § 162; 2 BLComm. 82.

BURGATOR. One who breaks into houses or inclosed places, as distinguished from one who committed robbery in the open country. Spelman.

BURGBOTE. In old English law. A term applied to a contribution towards the repair of castles or walls of defense, or of a borough.

BURGENSES. In old English law. Inhabitants of a *burgus* or borough; burgesses. Fleta, lib. 5, c, 6, § 10.

BURGERISTH. A word used in Domesday, signifying a breach of the peace in a town. Jacob.

BURGESS. In English law. An inhabitant or freeman of a borough or town; a person duly and legally admitted a member of a municipal corporation. Spelman; 3 Steph.Comm. 188, 189. A magistrate of a borough. Blount. An elector or voter; a person legally qualified to vote at elections. The word in this sense is particularly defined by the statute 5 & 6 Wm. IV. c. 76, §§ 9, 13. 3 Steph.Comm. 192. A representative of a borough or town, in parliament. Co.Litt. 109a; 1 Bl.Comm. 174.

In American law. The chief executive officer of a borough, bearing the same relation to its government and affairs that the mayor does to those of a city; so used in Pennsylvania. In Connecticut boroughs the *board of burgesses* cor-

responds to the township board or board of trustees in some other states, or to the common council of a city. Cent. Dict.

BURGESS ROLL. A roll, required by the St. 5 & 6 Wm. IV. c. 76, to be kept in corporate towns or boroughs, of the names of burgesses entitled to certain new rights conferred by that act.

BURGH-BRECHE. A fine imposed on the community of a town, for a breach of the peace, etc.

BURGH ENGLISH. See Borough English.

BURGH ENGLOYS. Borough English *(q. v.).*

BURGHMAILS. Yearly payments to the crown of Scotland, introduced by Malcolm III., and resembling the English fee-farm rents.

BURGHMOTE. In Saxon law. A court of justice held semi-annually by the bishop or lord in a *burg,* which the thanes were bound to attend without summons.

BURGLAR. One who commits burglary. One who breaks into a dwelling-house in the nighttime with intent to commit a felony. O'Connor v. Press Pub. Co., 34 Misc. 564, 70 N.Y.Supp. 367. See Burglary.

BURGLARIOUSLY. In pleading. A technical word which must be introduced into an indictment for burglary at common law. Lewis v. State, 16 Conn. 34; Reed v. State, 14 Tex.App. 665.

BURGLARITER. L. Lat. (Burglariously.) In old criminal pleading. A necessary word in indictments for burglary.

BURGLARY. The breaking and entering the house of another in the nighttime, with intent to commit a felony therein, whether the felony be actually committed or not. Soders v. State, 81 Tex.Cr.R. 506, 195 S.W. 1146, 1147; Hunter v. State, 29 Ind. 80; State v. Allen, 186 N.C. 302, 119 S.E. 504, 506; State v. Hodgdon, 89 Vt. 148, 94 A. 301, 302.

The common-law definition has been much modified by statute in several of the states. Pen.Code Cal. § 459; People v. Mendelson, 264 Ill. 453, 106 N.E. 249, 251, L.R.A. 1915C, 627; State v. Dunlap, 103 N.J.Law, 209, 136 A. 510; Burglary of private residence at night is "nighttime burglary" and not ordinary "burglary." Shaffer v. State, 137 Tex.Cr.R. 476, 132 S.W.2d 263. Commission in nighttime is not essential. People v. Glickman, 377 Ill. 360, 36 N.E.2d 720, 722, 723; State v. Williams, 189 La. 355, 179 So. 452. Entry in the nighttime without breaking, or breaking and entering in the daytime constitutes "burglary." State v. Williams, 189 La. 355. 179 So. 452.

Intended commission of some other offense is essential. Commonwealth v. Doran, 145 Pa.Super. 173, 20 A.2d 815, 816.

Entry into a house made in an unusual place with intent to commit a felony or theft is a "burglary by breaking." Harroll v. State, 135 Tex.Cr.R. 65, 117 S.W.2d 103.

See Breaking.

BURGLARY IN THE FIRST DEGREE. Unlawful and intentional breaking and unlawful and intentional entry in nighttime into dwelling house presently occupied, with intent to commit felony. State v. Madden, 212 N.C. 56, 192 S.E. 859, 860. Burglary committed "between sunset and sunrise". People v. Helsley, 41 Cal.App.2d 935, 108 P.2d 97, 98.

BURGOMASTER. The title given in Germany to the chief executive officer of a borough, town, or city; corresponding to our "mayor."

BURGUNDIAN LAW. See Lex Burgundionum.

BURGWHAR. A burgess *(q. v.).*

BURH. A fastness. The hill-top that has been fortified as a burh. Very often it has given its name to a neighboring village; it is the future *borough.* The entrenchment around a great man's house was a burh. See Maitland, Domesday and Beyond, 183.

BURIAL. Act of burying a deceased person, sepulture, interment, act of depositing a dead body in the earth, in a tomb or vault, or in the water; the act of interring the human dead. Brady v. Presnell, 204 N.C. 659, 169 S.E. 278, 280. See Lay v. State, 12 Ind.App. 362, 39 N.E. 768.

BURIAL INSURANCE. A contract based on legal consideration whereby obligor undertakes to furnish obligee or one of latter's relatives at death burial reasonably worth fixed sum. Sisson v. Prata Undertaking Co., 49 R.I. 132, 141 A. 76.

BURIAL PLACE. A portion of ground set apart for or occupied by grave, or as a grave or graveyard. Code 1932, § 9052. Leaphart v. Harmon, 186 S.C. 362, 195 S.E. 628, 629.

BURIAL PURPOSES. Continuing care, preservation, and ornamentation of the place of interment as included in term. People v. Rosehill Cemetery Co., 371 Ill. 510, 21 N.E.2d 766, 770.

BURKING, BURKISM. Murder committed with the object of selling the cadaver for purposes of dissection, particularly and originally, by suffocating or strangling the victim.

BURLAW COURTS. Courts consisting of neighbors selected by common consent to act as judges in determining disputes between neighbor and neighbor.

BURLAWS. In Scotch law. Laws made by neighbors elected by common consent in the burlaw courts. Skene.

BURLESQUE. A plotless musical entertainment consisting of a series of unrelated episodes and dances, all with the purpose of depicting or suggesting sexual subjects or objects. Bonserk Theatre Corporation v. Moss, Sup., 34 N.Y.S.2d 541, 549.

BURN, n. A hurt, injury, or effect caused by burning. Webster, Dict.

A "first-degree burn" varies from redness to a blister. A "second-degree burn" results where the skin is charred or killed. Murphy v. Ludowici Gas & Oil Co., 96 Kan. 321, 150 P. 581, 582.

BURN, v. To consume with fire. See Hiatt v. Travelers' Ins. Co., 197 Iowa 153, 197 N.W. 3, 4, 33

A.L.R. 655; Pacific Creosoting Co. v. Thames & Mersey Marine Ins. Co., D.C.Wash., 210 F. 958, 959.

"Burning," outside of laboratories and certain workshops, is a process of oxidation, which, if sufficiently violent, heats the elements involved to incandescence, and, if combustible gases are given off, there is a flame. Scully v. Bremer County Farmers' Mut. Fire Ins. Ass'n, 215 Iowa 368, 245 N.W. 280, 282.

The verb "to burn," iu an indictment for arson, is to be taken in its common meaning of "to consume with fire." Hester v. State, 17 Ga. 130. To constitute a "burning" essential to arson, there must be a wasting or destruction of the fibers or texture of the wood, no matter how small in extent. People v. Oliff, 361 Ill. 237, 197 N.E. 777, 780; it is not necessary that the building should be consumed or materially injured and it is sufficient if fire is actually communicated to any part thereof, however small. State v. Mutschler, 55 N. D. 120, 212 N.W. 832, 833; charring is burning. State v. Pisano, 107 Conn. 630, 141 A. 660, 661.

BURNED OUT OF SIGHT. Merchandise is "burned out of sight" when burned to an ash or into such small particles that it might be washed away by water or swept into debris. Hyland v. Millers Nat. Ins. Co., D.C.Cal., 58 F.2d 1003, 1007.

BURNING FLUID. As used in policies of insurance, this term does not mean any fluid which will burn, but it means a recognized article of commerce, called by that name, and which is a different article from naphtha or kerosene. Putnam v. Insurance Co., C.C.N.Y., 4 Fed. 764; Wheeler v. Insurance Co., 6 Mo.App. 235.

BURNING IN THE HAND. In old English criminal law, laymen, upon being accorded the benefit of clergy, were burned with a hot iron in the brawn of the left thumb, in order that, being thus marked, they could not again claim their clergy. 4 Bl.Comm. 367. This practice was finally abolished by Stat. 19 Geo. III. c. 74; though before that time the burning was often done with a cold iron.

BURNT COTTON. Cotton which has been on fire, and which has not been subsequently repicked and rebaled. Southern Ry. Co. v. Pettit, C.C.A. Tenn., 257 F. 663, 664.

BURROCHIUM. A burroch, dam, or small wear over a river, where traps are laid for the taking of fish. Cowell.

BURROWMEALIS. In Scotch law. A term used to designate the rents paid into the king's private treasury by the burgesses or inhabitants of a borough.

BURSA. Lat. A purse.

BURSAR. A treasurer of a college.

BURSARIA. The exchequer of collegiate or conventual bodies; or the place of receiving, paying, and accounting by the bursars. Also stipendiary scholars, who live upon the burse, fund, or joint-stock of the college.

BURYING ALIVE. In English law. The ancient punishment of sodomites, and those who contracted with Jews. Fleta, lib. 1, c. 27, § 3.

BURYING-GROUND. A place set apart for the interment of the dead; a cemetery. Appeal Tax Court v. Academy, 50 Md. 353.

BUS. A vehicle which serves passenger public, but does not operate upon fixed tracks. Patillo v. State, 120 Tex.Cr.R. 568, 47 S.W.2d 847.

BUSCARL, In Saxon and old English law. Seamen or marines. Spelman.

BUSHEL. A dry measure, containing four pecks, eight gallons, or thirty-two quarts. But the dimensions of a bushel, and the weight of a bushel of grain, etc., vary in the different states in consequence of statutory enactments. Richardson v. Spafford, 13 Vt. 245; Milk v. Christie, 1 Hill, N.Y., 106; Hockin v. Cooke, 4 Term, 316.

BUSHIDO. *Jap.* The unwritten code of conduct of the *Samurai* demanding loyalty to superiors only, simplicity of living and military valor. Treachery and brutality against one's enemies, and self-sacrifice, blind loyalty and unquestioning obedience to one's superiors are cardinal characteristics of the code. 1945 Report of the Tenney Joint Fact-Finding Committee on Un-American Activities to the California Legislature, p. 49.

BUSINESS. The term "business" has no definite or legal meaning. Connor v. City of University Park, Tex.Civ.App., 142 S.W.2d 706, 715; it may be an uncertain one. In re Frey's Will, 154 Misc. 421, 277 N.Y.S. 269, 272.

The term may mean or embrace:

Activity, Norman v. Southwestern R. Co., 42 Ga.App. 812, 157 S.E. 531, 533; In re Frey's Will, 277 N.Y.S. 269, 272, 154 Misc. 421; activity of some continuity, regularity and permanency, means of material being and livelihood, Board of Sup'rs of Amherst County v. Boaz, 176 Va. 126, 10 S.E.2d 498, 499. Activity or enterprise for gain, benefit, advantage or livelihood, Union League Club v. Johnson, Cal. App., 108 P.2d 487, 490. Activity which benefits corporation's organizers or members, O'Neil v. United Producers & Consumers Co-op., 57 Ariz. 295, 113 P.2d 645, 648; affairs, Sills v. Sorenson, 192 Wash. 318, 73 P.2d 798, 802, Industrial Fibre Co. v. State, 31 Ohio App. 347, 166 N.E. 418, 419; any particular occupation or employment, Industrial Fibre Co. v. State, 31 Ohio App. 347, 166 N.E. 418, 419; automobile liability policy excepting liability to insured's chauffeurs while engaged in his "business," anything in which insured desired to concern himself. Dickey v. General Accident Fire & Life Assur. Corporation Limited of Perth, Scotland, 328 Pa. 541, 195 A. 875 ; barter, Wills v. National. Mineral Co., 176 Okl. 193, 55 P.2d 449, 453; busyness, Snell v. Commissioner of Internal Revenue, C.C.A.Fla., 97 F.2d-891, 892; calling, Gardner v. Trustees of Main St. M. E. Church of Ottumwa, Iowa, 244 N.W. 667, 669, Morgan v. Salt Lake City, 78 Utah 403, 3 P.2d 510, 513; capacity by which results are reached, Norman v. Southwestern R. Co., 42 Ga.App. 812, 157 S.E. 531, 533; In re Frey's Will, 277 N.Y.S. 269, 272, 154 Misc. 421; commercial or industrial establishment or enterprise, Westor Theatres v. Warner Bros. Pictures, D.C.N.J., 41 F.Supp. 757, 761; concern, Industrial Fibre Co. v. State, 31 Ohio App. 347, 166 N.E. 418, 419; constant or continuous or habitual employment or occupation, Burk v. United States, C.C.A.Ala., 134 F.2d 879, 881; efforts of men to improve their economic conditions and satisfy their desires, people ex rel. Atty. Gen. v. Jersin, 101 Colo. 406, 74 P.2d 668, 670; employment, Industrial Fibre Co. v. State, 31 Ohio App. 347, 166 N.E. 418, 419; employment, occupation, or profession engaged in for gain or livelihood, Mergenthaler Linotype Co. v. McNamee, 123 Neb. 71, 249 N.W. 92, 93; employment occupying substantial portion of time and attention, Walsh v. Industrial Commission, 345 Ill. 366, 178 N.E. 82, 83; energy by which results are reached, Norman v. Southwestern R. Co., 42

Ga.App. 812, 157 S.E. 531, 533; In re Frey's Will, 277 N.Y.S. 269, 272, 154 Misc. 421; enterprise in which person engaged shows willingness to invest time and capital on future outcome, Doggett v. Burnet, 62 App.D.C. 103, 65 F.2d 191, 194; every legitimate avocation in life by which honest support for family may be obtained, Postal Savings & Loan Ass'n v. Powell, Tex.Civ.App., 47 S.W.2d 343, 352; every step in a long, complicated financial or commercial transaction, Business Management Corporation v. Department of Industrial Relations, Cal.App., 123 P.2d 142, 143; everything about which a person can be employed, Higgins v. Commissioner of Internal Revenue, 312 U.S. 212, 61 S.Ct. 475, 478, 85 L.Ed. 783; exchange of things of value, Wills v. National Mineral Co., 176 Okl. 193, 55 P.2d 449, 45.3; family car doctrine, any benefit which may inure to the owner, Donn v. Kunz, Ariz., 79 P.2d 965, 968; good will, In re Frey's Will, 277 N.Y.S. 269, 272, 154 Misc. 421, In re Weber's Estate, 261 Pa. 561, 104 A. 735, 737; intercourse of a commercial character, Karnuth v. U. S., on Petition of Albro, for Cook, N. Y., 279 U.S. 231, 49 S.Ct. 274, 278, 73 L. Ed. 677; mercantile transactions in general, Industrial Fibre Co. v. State, 31 Ohio App. 347, 166 N.E. 418, 419; occupation, Industrial Fibre Co. v. State, 31 Ohio App. 347, 166 N.E. 418, 419, Morgan v. Salt Lake City, 78 Utah 403, 3 P.2d 510, 513; occupation connected with operation or details of barter, trade, industry or commerce, Bankers' Holding Corporation v. Maybury, 161 Wash. 681, 297 P. 740, 743, 75 A.L.R. 1237; occupation or duty which requires attention *as a* business, Taylor v. Seney, 52 Ohio App. 79, 3 N.E.2d 374, 376; opportunities, Norman v. Southwestern R. Co., 42 Ga.App. 812, 157 S.E. 531, 533, In re Frey's Will, 277 N.Y.S. 269, 272, 154 Misc. 421; ordinary vocation, Ostlie v. H. F. Dirks & Son, 189 Minn. 34, 248 N.W. 283; professions, Connor v. City of University Park, Tex.Civ.App., 142 S.W.2d 706, 715; property, In re Frey's Will, 277 N.Y.S. 269, 272, 154 *Misc.* 421; In re Weber's Estate, 261 Pa. 561, 104 A. 735, 737; pursuit, Morgan v. Salt Lake City, 78 Utah 403, 3 P.2d 510, 513; regular profession, trade or occupation, Bordo v. Grayek, 136 Pa.Super. 124, 7 A.2d 142, 144; right or occasion of making one's self busy, Industrial Fibre Co. v. State, 31 Ohio App. 347, 166 N.E. 418, 419; sale, Wills v. National Mineral Co., 176 Okl. 193, 55 P.2d 449, 453; that which habitually busies or occupies or engages the time, attention, labor, and effort of men as a principal serious concern or interest or for livelihood or profit, Curley v. New England Trust Co., 221 Mass. 384, 109 N.E. 171, 174, Massolini v. Driscoll, 114 Conn. 546, 159 A. 480, 482; trade, Connor v. City of University Park, Tex.Civ. App., 142 S.W.2d 706, 715, Morgan v. Salt Lake City, 78 Utah 403, 3 P.2d 510, 513 ; transaction, Industrial Fibre Co. v. State, 31 Ohio App. 347, 166 N.E. 418, 419; occasional, single or isolated activities do not constitute business, Vandervort v. Industrial Commission of Wisconsin, 203 Wis. 362, 234 N.W. 492, 493; Goddard v. Chaffee, 2 Allen, Mass., 395, 79 Am. Dec. 796. But see Industrial Commission v. Hammond, 77 Colo. 414, 236 P. 1006, 1008.

Definition of "business" is not dependent on whether enterprise is profitable or has prospects of being profitable. Doggett v. Burnet, 62 App.D.C. 103, 65 F.2d 191, 193.

Labor, business, and work are not synonyms.

*Business Affected with Public Interest*

One so employed as to justify conclusion that it has been devoted to public use, and its use thereby in effect granted to public. Williams v. Standard Oil Co. of Louisiana, Tenn., 278 U.S. 235, 49 S.Ct. 115, 116, 73 L.Ed. 287, 60 A.L.R. 596.

### Business Agent

Agent having some general supervision over general affairs. Rorick v. Stilwell, 101 Fla. 4, 133 So. 609, 615.

### Business Compulsion

Species of duress. Marrazzo v. Orino, Wash., 194 Wash. 364, 78 P.2d 181, 186.

### Business Corporation

A corporation organized for the purpose of carrying on a business for profit. City of St. Louis v. Smith, 325 Mo. 471, 30 S.W.2d 729, 731.

### Business Course

A course such as is usually taught by business or commercial schools and colleges. Union Nat. Bank v. Kirby, 189 Ark. 369, 72 S.W.2d 229, 230.

### Business Done in State

Business begun and completed or ended in state. Clark v. Atlantic Pipe Line Co., Tex.Civ.App., 134 S.W.2d 322, 328.

### Business Enterprise

Investment of capital, labor and management in an undertaking for profit; one of the recognized attributes is centralized management and control. Helvering v. Jewel Mining Co., C.C.A.8, 126 F.2d 1011, 1015.

### Business Gains

Gains from sale, exchange, or other disposition of property used in business. Fackler v. Commissioner of Internal Revenue, C.C.A.6, 133 F.2d 509, 512.

### Business Hours

In general those hours during which persons in the community generally keep their places open for the transaction of business. Casalduc v. Diaz, C.C.A.Puerto Rico, 117 F.2d 915, 916.

In respect to the time of presentment and demand of bills and notes, business hours generally range through the whole day down to the hours of rest in the evening, except when the paper is payable at a bank or by a banker; Cayuga County Bank v. Hunt, 2 Hill, N.Y., 635. *See* Lunt v. Adams, 17 Me. 230.

An order allowing a stockholder to examine the books of a corporation "during business hours" does not mean that such examination be carried on throughout the entire business day, nor in the nighttime. Breslauer v. S. Franklin & Co., 205 Ill. App. 372, 374.

### Business League

An association is a business league if persons thereof have some common business interest. Underwriters' Laboratories v. Commissioner of Internal Revenue, C.C.A.7, 135 F.2d 371, 374.

### Business Losses

Losses from sale, exchange, or other disposition of property used in trade or business. Fackler v. Commissioner of Internal Revenue, C.C.A.6, 133 F.2d 509, 512.

### Business Name

Trade-name, business name and commercial name as synonymous. Plum v. Siekmann, 135 Neb. 101, 280 N.W. 264, 268.

### Business of Peddling

Business of one relying on present solicitation of chance patrons for purchases of uncertain quantities and making concurring deliveries. National Baking Co. v. Zabel, 227 Wis. 93, 277 N.W. 691, 693.

Business of Public Character

Business wherein person engaged expressly or impliedly holds himself out as engaged in business of supplying his product or service to public as a class or to limited portion of public. Masgai v. Public Service Commission of Pennsylvania, 124 Pa.Super. 370, 188 A. 599, 600.

Business of Same Nature

Business of like character. Rahoutis v. Unemployment Compensation Commission, 171 Or. 93, 136 P.2d 426, 434.

Business of Similar Nature

Business of analogous nature. Bedford v. Johnson, 102 Colo. 203, 78 P.2d 373, 376.

Business of the Community

A business in which a husband is engaged is prima facie the business of the community. Bird v. Steele, 74 Wash. 68, 132 P. 724, 725.

Business Pertaining to His Occupation

Duty pertaining to his occupation as synonym. Doherty v. American Employers' Ins. Co. of Boston, Mass., 112 N.J.Law, 52, 169 A. 652, 653.

Business Situs

A situs acquired for tax purposes by one who has carried on a business in the state more or less permanent in its nature. Endicott, Johnson & Co. v. Multnomah County, 96 Or. 679, 190 P. 1109, 1111. A situs arising when notes, mortgages, tax sale certificates and the like are brought into the state for something more than a temporary purpose, and are devoted to some business use there and thus become incorporated with the property of the state for revenue purposes. Lockwood v. Blodgett, 106 Conn. 525, 138 A. 520, 525. A situs arising where possession and control of property *right has* been localized in some independent business or investment away from owner's domicile so that its substantial use and value primarily attach to and become an asset of the outside business. State v. Atlantic Oil Producing Co., 174 Okl. 61, 49 P.2d 534, 538.

Business Trust

As distinguished from a joint-stock company, a pure "business trust" is one in which the managers are principals, and the shareholders are cestuis que trust. Betts v. Hackathorn, 159 Ark. 621, 252 S.W. 602, 604, 31 A.L.R. 847. The essential attribute is that property is placed in the hands of trustees who manage and deal with it for use and benefit of beneficiaries. Morriss v. Finkelstein, Mo.App., 127 S.W.2d 46, 49. A "Massachusetts trust" or "common law trust," In re Conover's Estate, 295 Ill.App. 443, 14 N.E.2d 980, 985.

Business Visitor

One who is invited or permitted to enter or remain upon the premises of another for a purpose directly or indirectly connected with the business dealings between them, Kurre v. Graham Ship by Truck Co., 136 Kan. 356, 15 P.2d 463, 465. One who comes on land at occupant's instance for purposes connected with purpose, business, or otherwise, for which occupant uses land, Haefeli v. Woodrich Engineering Co., 255 N.Y. 442, 175 N.E. 123, 125.

Farming Business

See Farming Business.

Private Business or Enterprise

One in which capital, time, attention, labor, and intelligence have been invested for gain and profit for private benefit, purposes and use. Green v. Frazier, 44 N.D. 395, 176 N.W. 11, 17.

Public Business

An element is that the business by its nature must be such that the public must use the same, or the commodities bought and sold in such manner as to affect the community at large as to supply, price, etc. Consumers' Light & Power Co. v. Phipps, 120 Okl. 223, 251 P. 63, 64.

BUSONES COMITATUS. In old English law. The barons of a county.

BUSSA. A term used in the old English law, to designate a large and clumsily constructed ship.

BUT. Except, except that, on the contrary, or, and also, yet, still. State v. Marsh, 108 Neb. 267, 187 N.W. 810, 812; Rickman v. Commonwealth, 195 Ky. 715, 243 S.W. 929.

BUTANE. Highly explosive and inflammable substance. Ohio Casualty Ins. Co. v. Callaway, D.C. Okl., 45 F.Supp. 586, 588.

BUTCHER. One who slaughters animals or dresses their flesh for market; a dealer in meat. Broadway v. Cope, 208 N.C. 85, 179 S.E. 452; Provo City v. Provo Meat & Packing Co., 49 Utah 528, 165 P. 477, 479, Ann.Cas.1918D, 530.

BUTLERAGE. A privilege formerly allowed to the king's butler, to take a certain part of every cask of wine imported by an alien; the part of the cask thus taken.

Called also prisage; 2 Bulstr. 254. Anciently, it might be taken also of wine imported by a subject. 1 Bla.Com. 315; *Termes de la Ley;* Cowell.

See, also, Botiler of the King.

BUTLER'S ORDINANCE. In English law. A law for the heir to punish waste in the life of the ancestor.

"Though it be on record in the parliament book of Edward I., yet it never was a statute, nor ever so received; but only some constitution of the king's council, or lords in parliament, which never obtained the strength or force of an act of parliament." Hale, Hist. Eng. Law, p. 18.

BUTT. A measure of liquid capacity, equal to one hundred and eight gallons; also a measure of land.

BUTTALS. The bounding lines of land at the end; abuttals, which see.

BUTTE. A hill. State v. Jefferson Island Salt Mining Co., 183 La. 304, 163 So. 145.

BUTTED AND BOUNDED. A phrase sometimes used in conveyancing, to introduce the boundaries of lands. See Butts and Bounds.

BUTTER. A dairy product manufactured exclusively from pure, unadulterated milk or cream, or both, with or without salt or coloring matter. Pardy v. Boomhower Grocery Co., 178 App.Div. 347, 164 N.Y.S. 775, 776; a product which should contain not less than 80 per centum by weight of milk fat. U. S. v. Centralia Dairy Co., D.C.Wash., 60 F.2d 141, 142.

BUTTER FAT. The natural fat of milk. Wiseman v. Affolter, 192 Ark. 509, 92 S.W.2d 388, 389.

BUTTS. In old English law. Short pieces of land left unplowed at the *ends* of fields, where the plow was turned about (otherwise called "headlands") as sidelings were similarly unplowed pieces on the sides. Burrill; Cowell. Also a place where bowmen meet to shoot at a mark.

BUTTS AND BOUNDS. A phrase used in conveyancing, to describe the end lines or circumscribing lines of a certain piece of land. The phrase "metes and bounds" has the same meaning.

The angles or points where these lines change their direction. Cowell; Spelman, Gloss. See Abuttals.

BUTTY. A local term in the north of England, for the associate or deputy of another; also of things used in common.

BUY. To acquire the ownership of property by giving an accepted price or consideration therefor; or by agreeing to do so; to acquire by the payment of a price or value; to purchase. Webster. To obtain something for a price, usually money. In re Troy, 43 R.I. 279, 111 A. 723, 724. As applied to prohibition law, means to possess. Slaughter v. State, 23 Ala.App. 390, 128 So. 129.

BUY IN. To purchase, at public sale, property which is one's own or which one has caused or procured to be sold.

BUYER. One who buys; a purchaser, particularly of chattels.

BUYER 60 CONTRACT. A contract wherein purchaser not wishing to pay for stock purchased outright buys it at a price in ewcess of the market and is allowed 60 days' time to pay for stock. Herrlein v. Tocchini, 128 Cal.App. 612, 18 P.2d 73, 75.

BUYING LONG. Purchase of stocks now with the expectation of selling them for a profit in the future. Henderson v. Usher, 125 Fla. 709, 170 So. 846, 851.

BUYING TITLES. The purchase of the rights or claims to real estate of a person who is not in possession of the land or is disseised. Void, and an offense, at common law and by 32 Hen. VIII, c. 9. This rule has been generally adopted in the United States, and is affirmed by statute in some states; 3 Washb.R.P. *596. Hinman v. Hinman, 4 Conn. 575; Helms v. May, 29 Ga. 124; Wash v. McBrayer, 1 Dana, Ky., 566; Bush v. Cooper, 26 Miss. 599, 59 Am.Dec. 270. But in other states, such a purchase is valid. Fetrow v. Merriwether, 53 Ill. 279; Hall's Lessee v. Ashby, 9 Ohio, 96, 34 Am. Dec. 424.

See, also, Bracery.

BY. Before a certain time, Rankin v. Woodworth, 3 Pen. & W., Pa., 48. Beside. Close to. In. In close proximity. In consequence of. Not later than a certain time, Fanta v. Maddex, 80 Cal.App. 513, 252 P. 630, 633; Scheuer & Tiego v. Benedict, 173 Wis. 241, 181 N.W. 129, 12 A.L.R. 1166. On or before a certain time, J. C. Engelman Land Co. v. La Blanco Agr. Co., Tex.Civ.App., 220 S.W. 653, 655. Through the means, act, agency or instrumentality of, Carroll v. Industrial Commission of Colorado, 69 Colo. 473, 195 P. 1097, 19 A.L.R. 107; Stevenson v. Lee Moor Contracting Co., 45 N.M. 354, 115 P.2d 342, 349. To. Under. With. The word may be used as exclusive, use preceding signature as indicating signature officially, and not personally. Pennsylvania Co. for Insurances on Lives and Granting Annuities v. Wallace, 346 Pa. 532, 31 A.2d 71, 77.

BY AN ACQUITTANCE FOR THE LAST PAYMENT ALL OTHER ARREARAGES ARE DISCHARGED. Noy, 40.

BY-BIDDER. One employed by the seller or his agent to bid on property with no purpose to become a purchaser, so that bidding thereon may be stimulated in others who are bidding in good faith. Osborn v. Apperson Lodge, Free and Accepted Masons, No. 195, of Louisa, Ky., 213 Ky. 533, 281 S.W. 500, 502, 46 A.L.R. 117.

BY-BIDDING. See Bid.

BY BILL, BY BILL WITHOUT WRIT. In practice. Terms anciently used to designate actions commenced by original *bill,* as distinguished from those commenced by original writ, and applied in modern practice to suits commenced by *capias ad respondendum.* 1 Arch.Pr. pp. 2, 337; 3 Bla. Comm. 285, 286. See Harkness v. Harkness, 5 Hill, N.Y., 213. The usual course of commencing an action in the King's Bench was by a bill of Middlesex. In an action commenced by *bill* it is not necessary to notice the form or nature of the action. 1 Chit.Pl. 283.

BY COLOR OF OFFICE. Acts done "by color of office" are where they are of such a nature that office gives no authority to do them. State v. National Surety Co., 162 Tenn. 547, 39 S.W.2d 581, 583.

BY ESTIMATION. In conveyancing. A term used to indicate that the quantity of land as stated is estimated only, not exactly measured; it has the

the same meaning and effect as the phrase "more or less." Hays v. Hays, 126 Ind. 92, 25 N.E. 600, 11 L.R.A. 376. It is said that the meaning of these words has never been precisely ascertained by judicial decision. See Sugden, Vend. 231; Noble v. Googins, 99 Mass. 234.

BY GOD AND MY COUNTRY. In old English criminal practice. The established formula of reply by a prisoner, when arraigned at the bar, to the question, "Culprit, how wilt thou be tried?"

BY LAW. By statutory law, Board of Education of Union Free School Dist. No. Six of Town of Greenburgh v. Town of Greenburgh, 277 N.Y. 193, 13 N.E.2d 768, 770. By state-wide legislation, and not ordinance, U. S. Fidelity & Guaranty Co. v. Guenther, C.C.A.Ohio, 31 F.2d 919, 920.

BY-LAW MEN. In English law. The chief men of a town, representing the inhabitants. In an ancient deed, certain parties are described as "yeomen and by-law *men."* 6 Q.B. 60. They appear to have been men appointed for some purpose of limited authority by the other inhabitants, under by-laws of the corporation appointing.

BY-LAWS. Regulations, ordinances, rules or laws adopted by an association or corporation or the like for its government. The word has also been used to designate the local laws or municipal statutes of a city or town. See Kilgour v. Gratto, 224 Mass. 78, 112 N.E. 489, 490. But of late the tendency is to employ the word "ordinance" exclusively for this class of enactments, reserving "by-law" for the rules adopted by private corpora. tions.

In England the term *by-law* includes any order, rule or regulation made by any local authority or statutory corporation subordinate to Parliament; 1 Odgers, C.L. 91.

A resolution is not necessarily a by-law though a by-law may be in the form of a resolution. Peck v. Elliott, C.C.A. Tenn., 24 C.C.A. 425, 79 Fed. 10, 38 L.R.A. 616; Bagley v. Oil Co., 201 Pa. 78, 50 A. 760, 56 L.R.A. 184. Distinction between a -by-law and a regulation, if any, discussed, Compton v. Van Volkenburgh, 34 N.J.Law, 135.

BY OPERATION OF LAW. Effected by some positive legal rule or amendment. Terminals & Transportation Corporation v. State, 169 Misc. 703, 8 N.Y.S.2d 282, 284.

BY-PASSING. As used in a contract for the construction of a subway, requiring the by-passing of all gas pipes whose service cannot be temporarily dispensed with, "by-passing" means the temporary cutting out of the gas mains under the street and laying of substituted temporary overhead gas pipes until all danger in using the original pipes is passed. Degnon Contracting Co. v. City of New York, 202 App.Div. 390, 196 N.Y.S. 63, 64.

BY REASON OF. Because of. Freeman v. Bennett, Tex.Civ.App., 195 S.W. 238, 241. By means, acts, or instrumentality of. State v. Kaufman, 50 S.D. 645, 211 N.W. 691, 692.

BY THE BY (also *Bye).* Incidentally; without new process. A term used in former English practice to denote the method of filing a declaration against a defendant who was already in the custody of the court at the suit of a different plaintiff or of the same plaintiff in another cause. It is no longer allowed; Archbold, New Pr. 293.

itY VIRTUE OF. By force of, by authority of, by reason of. Phillips v. Houston Nat. Bank, Houston, Tex., C.C.A.Tex., 108 F.2d 934, 936. Because of, through, or in pursuance of. State ex rel. and to Use of Jasper County v. Gass, 317 Mo. 744, 296 S.W. 431, 432. Money received by an officer by virtue of his office is money which that officer received under the law of his office, and not in violation thereof. Hollingsworth v. State, 73 Fla. 44, 75 So. 612, 614.

BYE-BIL-WUFFA. In Hindu law. A deed of mortgage or conditional sale.

BYRLAWS. See Burlaws.

BYROAD. The statute law of New Jersey recognizes three different kinds of roads: A public road, a private road, and a byroad. A byroad is a road used by the inhabitants, and recognized by statute, but not laid out. Such roads are often called "driftways." They are roads of necessity in newly-settled countries. Van Blarcom v. Frike, 29 N.J.Law, 516. See, also, Stevens v. Allen, 29 N.Y.Law, 68. An obscure or neighborhood road in its earlier existence, not used to any great extent by the public, yet so far a public road that the public have of right free access to it at all times. Wood v. Hurd, 34 N.J.Law, 89.

BYSTANDER. One who stands near; a chance looker-on; hence one who has no concern with the business being transacted. Baker v. State, 79 Tex. Cr.R. 510, 187 S.W. 949, 952; One present but not taking part, looker-on, spectator, beholder, observer. Music v. De Long, 209 Iowa, 1068, 229 N. W. 673, 676.

Under statutes relating to summoning of bystanders to complete jury panel, "bystanders" may be held to mean qualified talesmen summoned by sheriff from county at large. Commonwealth v. Sacco, 255 Mass. 369, 151 N.E. 839, 847. The term means qualified electors, not necessarily persons present in court. Bennett v. State, 161 Ark. 496, 257 S. W. 372, 373.

Under statutes authorizing "bystanders" to certify bill of exceptions, parties to the suit and their attorneys, Walker v. State, 88 Tex.Cr.R. 389, 227 S. W. 308, 312 ; and also witnesses in the case, McConnell v. McCord, 170 Ark. 839, 281 S.W. 384, as well as persons not present at the trial, are not bystanders, Buck v. St. Louis Union Trust Co., 267 Mo. 644, 185 S.W. 208, 211. Though jurors are not "bystanders" in the ordinary meaning of that term, they can sign a bystanders' bill of exceptions to acts and comments by the court and the argument of attorneys thereon. Alamo Iron Works v. Prado, Tex.Civ.App., 220 S.W. 282, 29L

# C

C. The third letter of the alphabet.

The letter is used as an abbreviation of many words of which it is the initial letter, such as cases, civil, circuit; as a numeral, in like manner with that use of A and B; and to designate the *third* of a series of propositions, sections, etc.

It was used among the Romans to denote condemnation, being the initial letter of *condemno,* I condemn. Tayl. Civil Law, 192.

The initial letter of the word *"Codex,"* used by some writers in citing the Code of Justinian. Tayl. Civil Law, 24.

C.—CT.—CTS. These abbreviations stand for "cent" or "cents," and any one of them, placed at the top or head of a column of figures, sufficiently indicates the denomination of the figures below. Jackson v. Cummings, 15 Ill. 453; Linck v. Litchfield, 141 Ill. 469, 31 N.E. 123.

C. A. B. Civil Aeronautics Board.

C. A. F. Under "c. a. f." provision in sale contract, freight figures substantially only as a part of the purchase price, not as a reservation of title, and the situation is similar to a "c. f." contract. Madeirense Do Brasil S/A v. Stulman-Emrick Lumber Co., C.C.A.N.Y., 147 F.2d 399, 402; cost and freight allowed to point of destination, being the equivalent of shipment F. 0. B. from point of origin. Farris & Co. v. William Schluderberg, T. J. Kurdle Co., 142 Fla. 765, 196 So. 184.

C. A. V. An abbreviation for *curia advisari vult,* the court will be advised, will consider, will deliberate.

C. B. In reports and legal documents, an abbreviation for common bench. Also an abbreviation for chief baron.

C. C. Various terms or phrases may be denoted by this abbreviation; such as circuit court, (or city or county court;) criminal cases, (or crown or civil or chancery cases;) civil code; chief commissioner; and *cepi corpus,* I have taken his body.

C. C.; B. B. I have taken his body; bail bond entered. See Capias ad Respondendum.

C. C. P. An abbreviation for Code of Civil Procedure; also for court of common pleas.

C. C. & C. I have taken his body and he is held.

C. F. & I. Also written "c. f. i." Letters used in contracts for *cost, freight and insurance,* indicating that the price fixed covers not only cost but freight and insurance to be paid by the seller; Benj. Sales, § 887; L.R. 8 Ex. 179; 7 H. & N. 574; Mee v. McNider, 109 N.Y. 500, 502, 17 N.E. 424.

C. I. A. Central Intelligence Agency.

C. I. F. Also written "c. 1. f." These letters in contracts of sale indicate, as does the expression "c. f. i." or "C. F. & I." *(q. v.),* that the price fixed covers the cost of goods, insurance, and freight. National Wholesale Grocery Co. v. Mann, 251 Mass. 238, 146 N.E. 791, 793; A. Klipstein & Co. v. Dilsizian, C.C.A.N.Y., 273 F. 473, 475; Columbus Bagging & Tie Co. v. Steel Union Co., 43 Ga. App. 126, 158 S.E. 459, 460.

C. J. An abbreviation for chief justice; also for circuit judge.

C. L. An abbreviation for civil law.

C. L. P. Common law procedure, in reference to the English acts so entitled.

C. 0. D. "Collect on delivery." These letters import the carrier's liability to return to the consignor either the goods or the charges. U. S. Exp. Co. v. Keefer, 59 Ind. 267; Express Co. v. Wolf, 79 Ill. 434; Danciger v. American Express Co., 192 Mo.App. 172, 179 S.W. 797, 798. The carrier accepts a check instead of cash at its own peril. Joseph Mogul, Inc., v. C. Lewis Lavine, Inc., 220 App.Div. 287, 221 N.Y.S. 391, 393.

C. P. An abbreviation for common pleas.

C. P. A. Certified Public Accountant.

C. R. An abbreviation for *curia regis;* also for chancery reports.

C. S. C. Civil Service Commission.

C. T. A. An abbreviation for *cum testamento annexo,* in describing a species of administration.

C. & F. The term "c. & f." means that the sale price includes in a lump sum "cost" and "freight" to named destination, and either requires seller to prepay freight or permits buyer, after having paid actual charges, to deduct them from the price. Madeirense Do Brasil S/A v. Stulman-Emrick Lumber Co., C.C.A.N.Y., 147 F.2d 399, 402.

CA. SA. An abbreviation of *capias ad satisfaciendum, q.* v.

CABAL. A small association for the purpose of intrigue; an intrigue. This name was given to that ministry in the reign of Charles IL formed by Clifford, Ashley, Buckingham, Arlington, and Lauderdale, who concerted a scheme for the restoration of popery. The initials of these five names form the word "cabal;" hence the appellation. Hume, Hist.Eng. ix. 69.

CABALIST. In French commercial law. A factor or broker.

CABALLARIA. Pertaining to a horse. It was a feudal tenure of lands, the tenant furnishing a horseman suitably equipped in time of war, or when the lord had occasion for his service.

CABALLERIA. In Spanish law. An allotment of land acquired by conquest, to a horse soldier. A quantity of land, varying in extent in different provinces. In those parts of the United States which formerly belonged to Spain, it is *a* lot of one hundred feet front, two hundred feet depth, and equivalent to five peonias. 2 White, New Recop. 49; Strother v. Lucas, 12 Pet. 444, 9 L.Ed. 1137, note; Escriche, Dicc. Raz.

CABALLERO. In Spanish law. A knight. So called on account of its being more honorable to go on horseback (ec *caballo)* than on any other beast.

CABANA. Cabin or small house. Godson v. Town of Surfside, 150 Fla. 614, 8 So.2d 497, 500.

CABARET. A room where musical entertainment is permitted in connection with restaurant business. People v. Liquorman, 171 Misc. 535, 13 N. Y.S.2d 410, 411.

CABINET. The advisory board or council of a king or other chief executive. The select or secret council of a prince or executive government; so called from the apartment in which it was originally held. Webster

CABINET COUNCIL. In English law. A private and confidential assembly of the most considerable ministers of state, to concert measures for the administration of public affairs; first established by Charles I. Wharton.

CABLE. A large and strong rope or chain. An assembly of wires held together in some way. Triangle Conduit & Cable Co. v. National Electric Products Corporation, D.C.Del., 56 F.Supp. 979, 981.

The term "cable railroad" in a city charter has been held to imply street railroads. City of Denver v. Mercantile Trust Co. of New York, C.C.A.Colo., 201 F. 790, 802.

CABLE TRANSFER. A credit for a sum of money payable at the place indicated. Oshinsky v. Taylor, Sup., 172 N.Y.S. 231, 232.

CABLISH. Brush-wood, or more properly windfall-wood.

CABOOSE CAR. A car attached to the rear of a freight train, fitted up for the accommodation of the conductor, brakeman, and chance passengers. Mammoth Cave R. Co. v. Commonwealth, 176 Ky. 747, 197 S.W. 406, 407.

CABOTAGE. A nautical term from the Spanish, denoting strictly navigation from cape to cape along the coast without going out into the open sea. In International Law, cabotage is identified with *coasting-trade* so that it means navigating and trading along the coast between the ports thereof.

CACHEPOLUS, or CACHERELLAS. An inferior bailiff, or catchpoll. Jacob.

CACHET, LETTRES DE. Letters issued and signed by the kings of France, and countersigned by a secretary of state, authorizing the imprisonment of a person. Abolished during the revolution of 1789. See Lettres de Cachet.

CACICAZGOS. In Spanish-American law. Property entailed on the *caciques,* or heads of Indian villages, and their descendants. Schm.Civil Law, 309.

CADASTRE. Sp. An official statement of the quantity and value of real property in any district, made for the purpose of justly apportioning the taxes payable on such property. Strother, v. Lucas, 12 Pet. 410, 428, note, 9 L.Ed. 1137.

CADASTU. In French law. An official statement of the quantity and value of realty made for purposes of taxation; same as *cadastre, (q. v.).*

CADAVER. A dead human body; a corpse. *Cadaver nullius in bonis,* no one can have a right of property in a corpse. 3 Co.Inst. 110, 2 Bl. Comm. 429; Griffith v. Railroad Co., 23 S.C. 32, 55 Am.Rep. 1.

CADAVEROUS. Pale, wan or ghastly appearance. Commonwealth v. Caldutte, 136 Pa.Super. 52, 7 A.2d 121, 123.

CADERE. Lat. To end; cease; fail; as in phrases such as *cadit actio,* (or *breve,)* the action (or writ) fails; *cadit assisa,* the assise abates; *cadit qucestio,* the discussion ends, there is no room for further argument; *cadere ab actione* (literally, to fall from an action), to fail in an action; *cadere in partem,* to become subject to a division.

To be changed; to become; to be turned into. *Cadit assisa in juratum,* the assise is changed into a jury. Calvinus, Lex.

CADET. Students in the military academy at West Point are styled "cadets;" students in the naval academy at Annapolis, "cadet midshipmen."

In England. A younger brother; the younger son of a gentleman; particularly applied to a volunteer in the army, waiting for some post. Jacob.

CAD!. A Turkish civil magistrate.

CADIT. Lat. It falls, abates, fails, ends, ceases. See Cadere.

CADUCA. In the civil law. Property of an inheritable quality; property such as descends to an heir. Also the lapse of a testamentary disposition or legacy. Also an escheat; escheated property.

CADUCARY. Relating to or of the nature of escheat, forfeiture, or confiscation. 2 Bl.Comm. 245.

CIEDUA. In the civil and old common law. Kept for cutting; intended or used to be cut. A term applied to wood.

CAESAR. In the Roman law. A cognomen in the Gens Julia, which was assumed by the successors of Julius. Tayl. Civil Law, 31.

CAESAREAN (also spelled Caesarian) OPERATION. A surgical operation whereby the foetus is

taken from the mother, with a view to save the lives of both, or either of them. Wharton.

CZETERUS. Lat. Other; another; the rest.

CJETERIS PARIBUS. Other things being equal.

CAETERIS TACENTIBUS. The others being silent; the other judges expressing no opinion. Comb. 186.

CIETERORUM. When a limited administration has been granted, and all the property cannot be administered under it, administration *cceterorum* (as to the residue) may be granted.

CAFE. A place where meals and drinks are served to the public generally or to selected portions of the public. In re Bowers, D.C.Cal., 33 F. Supp. 965, 966.

The word as ordinarily and popularly used means a restaurant or house for refreshments. Proprietors' Realty Co. v. Wohltmann, 95 N.J.Law, 303, 112 A. 410. The terms "restaurant" and "café" are substantially synonymous. State v. Shoaf, 179 N.C. 744, 102 S.E. 705, 9 A.L.R. 426.

CARTER. In old French law. A list of grievances prepared for deputies in the states-general. A petition for the redress of grievances enumerated.

CAHOOTS. Partnership, teaming up, or combining efforts. City of Abilene v. Luhn, Tex.Civ.App., 65 S.W.2d 370, 371.

CAIN, or CANE. In Scotch law. Rent paid In kind, as in poultry, eggs, etc.; hence, any tax, tribute, or duty. Cent. Dict.

CAIRNS' ACT. An English statute for enabling the court of chancery to award damages. 21 & 22 Vict. c. 27. Repealed as having been superseded by the Judicature Act of 1873.

CAISSON DISEASE. A dizziness accompanied with partial paralysis of the limbs, caused by too rapid reduction of air pressure to which men have been accustomed. Williams v. Missouri Bridge & Iron Co., 212 Mich. 150, 180 N.W. 357, 358. A condition caused by excessive air pressure wherein gas emboli or bubbles in the tissues of the body may induce severe pain and paralysis, Cannella v. Gulf Refining Co. of Louisiana, La.App., 154 So. 406, 413.

CALABOOSE. A term used vulgarly, and occasionally in judicial proceedings and law reports, to designate a jail or prison, particularly a town or city jail or lock-up. Supposed to be a corruption of the Spanish *calabozo,* a dungeon. See Gilham v. Wells, 64 Ga. 194.

CALAMITY. A state of deep distress or misfortune, produced by some adverse circumstance or event; misery; any great misfortune or cause of loss or misery; usually an event or disaster that produces extensive evil. City of Muskegon Heights v. Danigelis, 253 Mich. 260, 235 N.W. 83, 84, 73 A.L.R. 696.

CALAMUS. Lat. A reed; cane; hence, a reed pen; reed-pipe; arrow; small rod, etc. Harper, Lat. Dict. Also, an ancient Greek measure of length of 10 feet. Cent. Dict.

CALCETUM, CALCEA. A causeway, or common hard-way, maintained and repaired with stones and rubbish.

CALCULATE. To compute mathematically; in its broader significance, to intend, to purpose, or to design. State v. Smith, 57 Mont. 349, 188 P. 644, 648.

CALCULATED. An act may produce a certain effect, whether intended or not; fitted, adapted, or suited. Polly v. People, 107 Colo. 6, 108 P.2d 220, 223. Likely or intended. State v. Wyman, 56 Mont. 600, 186 P. 1, 5; Pouchan v. Godeau, 167 Cal. 692, 140 P. 952, 953.

CALE. In old French law. A punishment of sailors, resembling the modern "keelhauling."

CALEFAGIUM. In old law. A right to take fuel yearly. Cowell; Blount.

CALENDAR. The established order of the division of time into years, months, weeks, and days; or a systematized enumeration of such arrangement; an almanac. Rives v. Guthrie, 46 N.C. 86; Sculley v. Red Lodge-Rosebud Irr. Dist., 83 Mont. 282, 272 P. 543, 552.

### Calentar Days

A calendar day contains 24 hours but "calendar days" may be synonymous with "working days." Sherwood v. American Sugar Refining Co., C.C.A.N.Y., 8 F.2d 586, 588. The time from midnight to midnight, Lanni v. Grimes, 173 Misc. 614, 18 N.Y.S.2d 322, 327. So many days reckoned according to the course of the calendar.

### Calendar Month

One of the months of the year as enumerated in the calendar. Daley v. Anderson, 7 Wyo. 1, 48 P. 840, 75 Am.St.Rep. 870.

### Calendar Week

A block of seven days registered on calendar beginning with Sunday and ending with Saturday. Sonoma County v. Sanborn, 1 Cal.App.2d 26, 36 P.2d 419, 422. Term may consist of any *seven* days of given month. Sonoma County v. Sanborn, 1 Cal.App.2d 26, 36 P.2d 419, 422.

### Calendar Year

The period from January 1 to December 31, inclusive. Byrne v. Bearden, 27 Ga.App. 149, 107 S.E. 782, 783; Application of Title Guarantee & Trust Co., 183 Misc. 490, 48 N.Y.S. 374, 375. Ordinarily calendar year means 365 days except leap year, and is composed of 12 months varying in length. Shaffner v. Lipinsky, 194 N.C. 1, 138 S.E. 418, 419; United States, for Use of Strona v. Bussey, D.C.Cal., 51 F.Supp. 996, 999.

"Calendar year preceding election" means year beginning January 1 and ending December 31. People v. Milan, 89 Colo. 556, 5 P.2d 249, 253.

Calendar of Causes

A list of the causes instituted in the particular court, and now ready for trial, drawn up before beginning of the term. It is sometimes called the "trial list," or "docket."'

Calendar of Prisoners

In English practice. A list kept by the sheriffs containing the names of all the prisoners in their custody, with the several judgments against each in the margin. Staundef.P.C. 182; 4 Bl.Comm. 403.

Special Calendar

A calendar or list of causes, containing those set down specially for hearing, trial, or argument.

CALENDS. Among the Romans the first day of every month, being spoken of by itself, or the very day of the new moon, which usually happen together. And if *pridie,* the day before, he added to it, then it is the last day of the foregoing month, as *pridie calend. Septemb.* is the last day of August. If any number be placed with it, it signifies that day in the former month which comes so much before the month named, as the tenth calends of October is the 20th day of September; for if one reckons backwards, beginning at October, that 20th day of September makes the 10th day before October. In March, May, July, and October, the calends begin at the sixteenth day, but in other months at the fourteenth; which calends must ever bear the name of the month following, and be numbered backwards from the first day of the said following months. Jacob. See Rives v. Guthrie, 46 N.C. 87.

CALENDS, GREEK. A metaphorical expression for a time never likely to arrive, inasmuch as the Greeks had no calends.

CALF. As used in an exemption statute, should be construed to include an animal sucking a cow that is being milked, even though the animal be a yearling. Kiggins v. Henne & Meyer Co., Tex. Civ.App., 199 S.W. 494, 496.

CALICHE ROCK. A substance containing calcium carbonate like that found in ordinary limestone. Board of Com'rs of Roosevelt County v. Good, 44 N.M. 495, 105 P.2d 470, 472.

CALL, n.

Contract Language

As used in contract, means demand for payment of, especially by formal notice. Keyes v. Kimmel, 9 N.J.Misc.R. 604, 155 A. 19, 20.

Conveyancing

A visible natural object or landmark designated in a patent, entry, grant, or other conveyance of lands, as a limit or boundary to the land described, with which the points of surveying must correspond. Also the courses and distances designated. King v. Watkins, C.C.Va., 98 Fed. 922. See, also, Kentucky Union Co. v. Shepherd, 192 Ky. 447, 234 S.W. 10, 13.

Corporation Law

A demand by directors upon subscribers for shares for payment of a portion or installment; in this sense, it is capable of three meanings: (1) The resolution of the directors to levy the assessment; (2) its notification to the persons liable to pay; (3) the time when it becomes payable. Railway Co. v. Mitchell, 4 Exch. 543; Hatch v. Dana, Iii., 101 U.S. 205, 25 L.Ed. 885; Stewart v. Pub. Co., 1 Wash.St. 521, 20 P. 605.

Although the terms "call" and "assessment" are often used synonymously, the latter term applies with peculiar aptness to contributions above the par value of stock or the subscription liability of the stockholders. Porter v. Northern Fire & Marine Ins. Co., 36 N.D. 199, 161 N.W. 1012, 1014. See Assessment.

Dealings in Futures

Deposit of more margin. Fenner v. Tucker, 213 N.C. 419, 196 S.E. 357, 359.

Dealings in Securities or Grain

Option or right to demand a certain amount of securities or grain at a fixed price at or within certain time agreed on. Colston v. Burnet, 61 App. D.C. 192, 59 F.2d 867, 868; Dillon, Read & Co. v. Hoey, D.C.N.Y., 45 F.Supp. 475, 477.

English Law

The election of students to the degree of barrister at law, hence the ceremony or epoch of election, and the number of persons elected.

Mutual Act or Benefit Association Certificate

Official declaration that payment is required or demand for payment. Pasley v. Brady Mut. Life Ass'n, Tex.Civ.App., 2 S.W.2d 278, 279.

CALL, v. To summon or demand by name; to demand the presence and participation of a number of persons by calling aloud their names, either in a pre-arranged and systematic order or in a succession determined by chance.

Terms "called" and "sold" as equivalent. In re Gyllstrom's Will, 15 N.Y.S.2d 801, 808, 172 Misc. 655.

Call of the House

A call of the names of members of a legislative body in pursuance of a resolution requiring attendance of members.

Calling a Summons

In Scotch practice. See this described in Bell, Dict.

Calling an Election

Commonly construed as including, or as being synonymous with, the giving of notice of the election. State v. Hall, 73 Or. 231, 144 P. 475, 478; People v. Gough, 260 Ill. 542, 103 N.E. 685, 686.

Calling the Docket

The public calling of the docket or list of causes at commencement of term of court for setting a

time for trial or entering orders of continuance, default, nonsuit, etc. Blanchard v. Ferdinand, 132 Mass. 391.

Calling the Jury

Successively drawing out of a box the names of the jurors on the panels annexed to the *nisi prius* record, and calling them over in the order in which they are so drawn.

Calling the Plaintiff

A formal method of causing a nonsuit to be entered. When a plaintiff or his counsel, seeing that sufficient evidence has not been given to maintain the issue, withdraws, the crier is ordered to call or demand the plaintiff, and if neither he, nor any person for him appear, he is nonsuited. The phrase "let the plaintiff be called" is to be explained by reference to this practice. See 3 Bla. Comm. 376; 2 C. & P. 403; Porter v. Perkins, 5 Mass. 236, 4 Am.Dec. 52.

Calling to Testify

Under certain statutes, when adversary takes the witness' deposition, Allen v. Pollard, 109 Tex. 536, 212 S.W. 468; Clayton v. Ogden State Bank, 82 Utah 564, 26 P.2d 545, 548; or when he files interrogatories to the witness stating that his deposition will be taken in answer thereto, Wyatt v. Chambers, Tex.Civ.App., 182 S.W. 16, 18.

Calling to the Bar

In English practice. Conferring the dignity or degree of barrister at law upon a member of one of the inns of court. Holthouse. "Calls to the bench and bar are to be made by the most ancient, being a reader, who is present at supper on call night." 1 Black Books of Lincoln's Inn. 339.

Calling Upon a Prisoner

When a prisoner has been found guilty on an indictment, the clerk of the court addresses him and calls upon him to say why judgment should not be passed upon him.

CALL PATENT. One whose corners are all stakes, or all but one, or whose lines were not run out and marked at time. Combs v. Combs, 238 Ky. 362, 38 S.W.2d 243, 244.

CALLABLE. Option to pay before maturity on call. In re Opinions of the Justices, 231 Ala. 152, 164 So. 572, 578.

CALLABLE BONDS. Bonds which may be called for payment before their maturity. Fales v. Multnomah County, 119 Or. 127, 248 P. 151, 152.

CALLED UPON TO PAY. Compelled or required to pay. Taylor v. Coon, 79 Wis. 76, 48 N.W. 123, 128.

CALLERS. Persons employed by a motor carrier to unload truck or trailer bodies and advise checker of nature of items of freight unloaded. Cream v. M. Moran Transp. Lines, D.C.N.Y., 57 F.Supp. 212, 216.

CALLING. A business, occupation, or trade. Gray v. Board of County Com'rs of Sedgwick County, 101 Kan. 195, 165 P. 867, 868, L.R.A.1918F, 182. One's usual occupation, vocation, or business. Crook v. Commonwealth, 147 Va. 593, 136 S.E. 565, 567, 50 A.L.R. 1043. A profession, Ex parte Galusha, 184 Cal. 697, 195 P. 406, 407; C. D. Shamburger Lumber Co. v. Delavan, Tex.Civ.App., 106 S.W.2d 351, 355, 356.

CALPES. In Scotch law. A gift to the head of a clan, as an acknowledgment for protection and maintenance.

CALUMNIA.

In the civil law calumny, malice, or ill design; a false accusation; a malicious prosecution. Lanning v. Christy, 30 Ohio St. 115, 27 Am.Rep. 431.

In the old common law. A claim, demand, challenge to jurors.

CALUMNIZE JURAMENTUM. In the old canon law. An oath similar to the *calumnice jusjurandum, (q. v.).*

CALUMNIZE JUSJURAND1UM. The oath of (against) calumny. An oath imposed upon the parties to a suit that they did not sue or defend with the intention of calumniating, (calumniandi *animo,) e.,* with a malicious design, but from a firm belief that they had a good cause. Inst. 4, 16. The object was to prevent vexatious and unnecessary suits. It was especially used in divorce cases, though of little practical utility; Bish. Marr. & Div. § 353; 2 Bish.Marr.Div. & Sep. § 264. A somewhat similar provision is to be found in the requirement made in some states that the defendant shall file an affidavit of merits.

CALUMNIATOR. In the civil law. One who accused another of a crime without cause; one who brought a false accusation. Cod. 9, 46.

CALUMNY. Defamation; slander; false accusation of a crime or offense. See Calumnia.

CALVIN'S CASE. Calvin v. Smith, 7 Rep. 1; 2 S.T. 559, decided in 1608, in which it was held that persons born in Scotland after the accession of James I to the crown of England in 1603 were not aliens but were capable of inheriting land in England. Wharton.

CALVO DOCTRINE. The doctrine stated by the Argentine jurist, Carlos Calvo, that a government is not bound to indemnify aliens for losses or injuries sustained by them in consequence of domestic disturbances or civil war, where the state is not at fault, and that therefore foreign states are not justified in intervening, by force or otherwise, to secure the settlement of claims of their citizens on account of such losses or injuries. Such intervention, Calvo says, is not in accordance with the practice of European States towards one another, and is contrary to the principle of state sovereignty. 3 Calvo §§ 1280, 1297. The Calvo Doctrine is to be distinguished from the Drago Doctrine *(q. v.).*

See 18 Green Bag 377.

CALYPSO SONG. A song distinguished by a certain form, rhythm, and narrative style, apparently indigenous to the Island of Trinidad. Baron v. Leo Feist, Inc., D.C.N.Y., 78 F.Supp. 686, 687.

CAMARA. In Spanish law. A treasury. Las Partidas, pt. 6, tit. 3, 1, 2.

The exchequer. White, New Recop. b. 3, tit. 8, c. 1.

CAMBELLANUS, or CAMBELLARIUS. A chamberlain. Spelman.

CAMBER. Ship's camber is convex arc of vessel's deck from side to side. The Indien, C.C.A.Cal., 71 F.2d 752, 757.

CAMBIALE JUS. The law of exchange.

CAMBIATOR. In old English law. An exchanger. *Cambiatores monetcs,* exchangers of money; money-changers.

CAMBIO. In Spanish law. Exchange. Schm. Civil Law, 148.

CAMBIPARTIA. Champerty; from *campus,* a field, and *partus,* divided. Spelman.

CAMBIPARTICEPS. A champertor.

CAMBIST. In mercantile law. A person skilled in exchanges; one who trades in promissory notes or bills of exchange; a broker.

CAMBIUM. In the civil law. Change or exchange. A term applied indifferently to the exchange of land, money, or debts. Du Cange.

Cambium *reale* or *manuals* was the term generally used to denote the technical common-law exchange of lands; cambium *locale, mercantile,* or *trajectitium,* was used to designate the modern mercantile contract of exchange, whereby a man agrees, in consideration of a sum of money paid him in one place, to pay a like sum in another place. Poth. *de Change,* n. 12; Stony, Bills, § 2, et seq.

CAMERA. In old English law. A chamber, room, or apartment; a judge's chamber; a treasury; a chest or coffer. Also, a stipend payable from vassal to lord; an annuity. See In Camera.

CAMERA REGIS. In old English law. A chamber of the king; a place of peculiar privileges especially in a commercial point of view. The city of London was so called. Year Book, p. 7, Hen. VI, 27; Burrill, Law Dic.'

CAMERA SCACCARII. The old name of the exchequer chamber.

CAMERA STELLATA. The star chamber *(q. v.).*

CAMERALISTICS. The science of finance or public revenue, comprehending the means of raising and disposing of it.

CAMERARIUS. A chamberlain; a keeper of the public money; a treasurer. Spelman Gloss. Cam*bellarius;* 1 Perr. & D. 243. Also a bailiff or receiver.

CAMINO. In Spanish law. A road or highway. Las Partidas, pt. 3, tit. 2, 1. 6.

CAMOUFLAGE. The art of disguising or concealing the nature of objects. Palmer v. -Commonwealth, 240 Ky. 175, 41 S.W.2d 936, 938.

CAMP. The ground or spot on which huts, tents, are erected for shelter; single hut or shelter; to camp; to encamp; to lodge in a camp. Jones v. State, 64 Ga.App. 376, 13 S.E.2d 462, 465.

CAMPAIGN. All the things and necessary legal and factual acts done by a candidate and his adherents to obtain a majority or plurality of the votes to be cast; running for office, or candidacy for office. Norris v. United States, C.C.A.Neb., 86 F.2d 379, 382. Any organized effort to promote a cause or to secure some definite result with any group of persons. State ex rel. Green v. City of Cleveland, Ohio App., 33 N.E.2d 35, 36.

CAMPANA. In old European law. A bell. Spelman.

CAMPANA BAJULA. A small handbell used in the ceremonies of the Romish church; and, among Protestants, by sextons, parish clerks, and criers. Cowell.

CAMPANARIUM, CAMPANILE. A belfry, bell tower, or steeple; a place where bells are hung. Spelman; Townsh.Pl. 191, 213.

CAMPERTUM. A part of a larger field or ground, which would otherwise be in gross or in common. See Champert; Champerty.

CAMPBELL'S (LORD) ACTS. English statutes, for amending the practice in prosecutions for libel, 9 & 10 Vict. c. 93; also 6 & 7 Vict. c. 96, providing for compensation to relatives in the case of a person having been killed through negligence; also 20 & 21 Vict. c. 83, in regard to the sale of obscene books, etc.

CAMPERS. A share; a champertor's share; a champertous division or sharing of land.

CAMPERTUM. A cornfield; a field of grain. Blount; Cowell; Jacob; Whishaw.

CAMPFIGHT. In old English law. The fighting of two champions or combatants in the field; the judicial combat, or *duellum.* 3 Inst. 221.

CAMPUM PARTERE. To divide the land. See Champerty.

CAMPUS. (Lat. A field.)

In old European law. An assembly of the people anciently held in the open air, in some *plain.*

In feudal and old English law. A field, or plain. The field, ground, or lists marked out for the combatants in the *duellum,* or trial by battle. Burrill, Law Dict.

CAMPUS MAIL. The field of May. An anniversary assembly of the Saxons, held on May-day, when they confederated for the defense of the kingdom against all its enemies.

CAMPUS MARTI!. The field of March. See Champ de Mars.

CAN. As a noun, a contraption in which employees are lowered to the floor of a mine. Eagle-Picher Mining & Smelting Co. v. Coffey, 186 Okl. 214, 97 P.2d 48, 49.

CAN. As a verb, to be enabled by law; to have a right to, Bailey Realty & Loan Co. v. Bunting, 31 Ala.App. 450, 19 So.2d 607, 608. To put in a can or cans, to preserve by putting in sealed cans, to tin, Henry v. Markesan State Bank, C.C.A.Minn., 68 F.2d 554, 557; is often interpreted as the equivalent of "may." The Pantorium v. McLaughlin, 116 Neb. 61, 215 N.W. 798, 799. See Cannot.

CANA. A Spanish measure of length varying (in different localities) from about five to seven feet.

CANADA. Sp. Valley. Benavides v. State, Tex. Civ.App., 214 S.W. 568, 572.

CANADIAN JUMPER. A term applied to a nervous person who jumps when another touches him, shouting at the same time, or when anything thrown hits him, or when a loud noise is made. Goupiel V. Grand Trunk Ry. Co., 94 Vt. 337, 111 A. 346, 347.

CANAL. An artificial ditch or trench in the earth, for confining water to a defined channel, to be used for purposes of transportation. See Bishop v. Seeley, 18 Conn. 394; Hubbard v. Dunne, 276 Ill. 598, 115 N.E. 210, 215; Guinan v. Boston, Cape Cod & New York Canal Co., C.C.A.N.Y., 1 F.2d 239.

It includes the banks; it has reference to the excavation or channel as a receptacle for the water; it is an artificial thing. Kennedy v. Indianapolis, 103 U.S. 604, 26 L.Ed. 550. As used in statute concerning right of way over public lands for irrigation, it embraces whole project including reservoir. U. S. v. Big Horn Land & Cattle Co., C.C.A.Colo., 17 F.2d 357, 364; Johnson Irr. Co. v. Ivory, 46 Wyo. 221, 24 P.2d 1053, 1056.

CANCEL. To obliterate; to strike or cross out; to destroy the effect of an instrument by defacing, obliterating, expunging, or erasing it; to revoke or recall. Ellsworth College v. Carleton, 178 Iowa 845, 160 N.W. 222, 223; Reliance Life Ins. Co. v. Thayer, 84 Okl. 238, 203 P. 190, 192. To annul or destroy, make void or invalid, or set aside. Irwin v. State Brokerage Co., 82 Ind.App. 687, 147 N.E. 531, 532; In re Crawford's Will, 80 Misc. 615, 142 N.Y.S. 1032, 1033; Clegg v. Schvaneveldt, 79 Utah 195, 8 P.2d 620, 621. To rescind or abandon. Pearson v. Brown, 27 Cal.App. 125, 148 P. 956, 958. To repeal, surrender, or waive. Greib v. Dullea, 66 Cal.App.2d 986, 153 P.2d 581, 590. To terminate. Schwartz v. Van Winkle, Sup., 47 N.Y.S.2d 264, 265.

The term is sometimes equivalent to "discharge" or "pay." Auburn City Bank v. Leonard, 40 Barb., N.Y., 119; Debes v. Texas Nat. Bank of Beaumont, Tex.Civ.App., 92 S.W.2d 476, 479.

Courts of equity frequently cancel instruments which have answered the end for which they were created, or instruments which are void or voidable, ii order to prevent them from being vexatiously used against the person apparently bound by them. Snell, Eq. 498.

See Cancellation.

CANCELLARIA. Chancery; the court of chancery. *Curia cancellaria* is also used in the same sense. See 4 Bl.Comm. 46; Cowell.

CANCELLARII ANGLI)E DIGNITAS EST, UT SECUNDUS A REGE IN REGNO HABETUR. The dignity of the chancellor of England is that he is deemed the second from the sovereign in the kingdom. 4 Inst. 78.

CANCELLARIUS. A chancellor; a scrivener, or notary. A janitor, or one who stood at the door of the court and was accustomed to carry out the commands of the judges. Du Cange.

In early English law, the keeper of the king's seal. In this sense only, the word chancellor seems to have been used in the English law; 3 Bla.Comm. 46. See 15 Harv.L. Rev. 109; 4 Co.Inst. 78; Dugdale Orig. Jur. fol. 34 ; and generally Selden, Discourses ; Inderwick, King's Peace ; 3 Steph.Com. 346; 1 Poll. & Maitl. 172; 1 Stubbs, Const. Hist. 381; Campbell, Lives of the Lord Chancellors, vol: 1; Holdsw. Hist. E. L. ; Pollock, Expans. of C. L.

CANCELLATION. Abandonment of contract. State ex rel. Pacific Mut. Life Ins. Co. v. Larson, 152 Fla. 729, 12 So.2d 896, 897. Act of crossing out a writing, Plaut v. Shirley, 200 Ky. 619, 255 S.W. 273, 274; In re Parsons' Will, 119 Misc. 26, 195 N:Y.S. 742, 745; Culp v. First Commercial Sa$^{y}$. Bank of Constantine, 288 Mich. 646, 286 N.W. 113, 114; act which manifests an intent to annul and puts the instrument in condition where its invalidity appears on its face, In *re* Akers' Will, 74 App.Div. 461, 77 N.Y.Supp. 643; Baldwin v. Howell, 45 N.J.Eq. 519, 15 A. 236; In re Tremain's Will, Surr., 7 N.Y.S.2d 781, 790; Annulment or abrogation, Golden v. Fowler, 26 Ga. 464, Winton v. Spring, 18 Cal. 455, Sanborn v. Ballonfonte, 98 Cal.App. 482, 277 P. 152, 155; defacement or mutilation of instrument, Worcester Bank & Trust Co. v. Ellis, 292 Mass. 88, 197 N.E. 637, 639. Reduction by insurer of amount of insurance, Gill v. Fidelity Phenix Fire Ins. Co., D.C.Ky., 5 F.Supp. 1, 2; Suspension of insurance policy, Federal Land Bank of Omaha v. Farmers' Mut. Ins. Ass'n of Adams and Adjoining Counties, 217 Iowa 1098, 253 N.W. 52. Termination, Otterbein v. Babor & Comeau Co., 272 N.Y. 149, 5 N.E.2d 71, 72, 107 A.L.R. 1510; words of revocation written across instrument, In re Semler's Will, 176 Misc. 687, 28 N.Y.S.2d 390, 392, 393.

Cancellation is properly distinguished from obliteration. Townshend v. Howard, 86 Me. 285, 29 A. 1077. Spoliation may amount to a cancellation. Cancellation does not revoke unless done with that intention. In re Woods' Will, Sur., 11 N.Y.Supp. 157.

CANCELLATURA. In old English law. A canceling. Bract. 398b.

CANCELLI. The rails or lattice work or balusters inclosing the bar of a court of justice or the communion table. Also the lines drawn on the face of a will or other writing, with the intention of revoking or annulling it.

CANDIDATE. One who seeks or offers himself, or is put forward by others, for an office, privilege, or honor. Starkweather v. Hoss, 126 Or. 630, 270 P. 768, 770; State ex rel. Ranney v. Corey, Ohio App., 47 N.E.2d 799, 800; it is not necessary that he should have been nominated. Leonard v. Corn., 112 Pa. 624, 4 A. 224. A nominee, State ex rel. Van Schoyck v. Board of Com'rs of Lincoln County, 46 N.M. 472, 131 P.2d 278, 284. Under a presidential primary law, a person receiving the approval of the required number of petitioners may be deemed a candidate even contrary to his wishes. McCamant v. Olcott, 80 Or. 246, 156 P. 1034, 1038, L.R.A.1916E, 706.

CANDLEMAS-DAY. In English law. A festival appointed by the church to be observed on the second day of February in every year, in honor of the purification of the Virgin Mary, being forty days after her miraculous delivery. At this festival, formerly, the Protestants went, and the Papists now go, in procession with lighted candles; they also consecrate candles on this day for the service of the ensuing year. It is the fourth of the four cross quarter-days of the year. Wharton.

CANE. In Scotch law. The same as *cain (q. v.).*

CANFARA. In old records. A trial by hot iron, formerly used in England. Whishaw.

CANNOT. Denotes that one is not able (to do some act). Southern Pac. Co. v. Frye & Bruhn, 82 Wash. 9, 143 P. 163, 165. But the term is often equivalent to "shall not." Bragg v. Hatfield, 124 Me. 391, 130 A. 233, 234.

CANON.

A Dignitary of the English Church

A dignitary of the English church, being a prebendary or member of a cathedral chapter. All members of chapters except deans are now entitled *canons,* in England. 2 Steph.Comm. 11th ed. 687, n.; 1 Bla.Comm. 382.

A Law, Rule, etc.

A law, rule, or ordinance in general, and of the church in particular. An ecclesiastical law or statute. A rule of doctrine or discipline. The term is generally applied to designate the ordinances of councils and decrees of popes.

A System or Aggregation of Correlated Rules

A system or aggregation of correlated rules, whether of statutory origin or otherwise, relating to and governing a particular department of legal science or a particular branch of the substantive law.

Canon law. A body of ecclesiastical jurisprudence. In England, according to Blackstone, there is a kind of national canon law. 1 Bl. Comm. 82. The canon law is contained in two principal parts,—the decrees or ecclesiastical constitutions made by the popes and cardinals; and the decretals or canonical epistles written by the pope, or by the pope and cardinals, at the suit of one or more persons. As the decrees set out the origin of the canon law, and the rights, dignities, and decrees of ecclesiastical persons, with their manner of election, ordination, etc., so the decretals contain the law to be used in the ecclesiastical courts. Jacob. The canon law forms no part of the law of England, unless it has been brought into use and acted on there; 11 Q.B. 649. See generally Encyel.Br., *sub voce,* Canon Law; Maitland, Canon Law; Jenks' Teutonic Law; 1 Sel. Essays on Anglo-Amer.Leg.Hist. 46; Ayliffe, Par.Jur.Can. Ang.; Preface to Burn, Eccl.Law, Tyrwhitt ed. 22; Hale, Civ.L. 26; Bell's Case of a Putative Marriage, 203; *Dict. du Droit Canonique;* Stair, Inst. b. 1, t. 1, 7; 1 Poll. & Maitl. 90.

Canon religiosorum. In ecclesiastical records. A book wherein the religious of every greater convent had a fair transcript of the rules of their order, frequently read among them as their local statutes. Kennett, Gloss.; Cowell.

Canons of construction. The system of fundamental rules and maxims which are recognized as governing the construction or interpretation of written instruments. In re Clarke, 174 App.Div. 736, 161 N.Y.S. 484, 487.

Canons of descent. The legal rules by which inheritances are regulated, and according to which. estates are transmitted by descent from the ancestor to the heir.

Canons of inheritance. The legal rules by which inheritances are regulated, and according to which estates are transmitted by descent from the ancestor to the heir. 2 Bl.Comm. 208.

In Civil, Spanish, and Mexican Law an annual charge or rent; an emphyteutic rent.

In Old English records. A prestation, pension, or customary payment.

CANONICAL. Pertaining to, or in conformity to, the canons of the church.

CANONICAL DISABILITY. Incurable physical impotency or incapacity for copulation. D. v. D., Del.Super., 2 Terry 263, 20 A.2d 139, 141.

CANONICAL OBEDIENCE. That duty which a clergyman owes to the bishop who ordained him, to the bishop in whose diocese he is beneficed, and also to the metropolitan of such bishop. Wharton.

CANONICUS. In old English law. A canon. Fleta, lib. 2, c. 69, § 2.

CANONIST. One versed and skilled in the canon law; a professor of ecclesiastical law.

CANONRY. In English ecclesiastical law. An ecclesiastical benefice, attaching to the office of canon. Holthouse.

CANT. In the civil law. A method of dividing property held in common by two or more joint owners. It may be avoided by the consent of all of those who are interested, in the same man-

ner that any other contract or agreement may be avoided. Hayes v. Cuny, 9 Mart.O.S. (La.) 87. See Licitacion.

CANTEL, or CANTLE. A lump, or that which is added above measure; also a piece of anything, as "cantel of bread," or the like. Blount.

CANTERBURY, ARCHBISHOP OF. In English ecclesiastical law. The primate of all England; the chief ecclesiastical dignitary in the church. His customary privilege is to crown the kings and queens of England. Has also, by 25 Hen. VIII, c. 21, the power to grant dispensations. Wharton.

CANTRED. A district comprising a hundred villages; a hundred. A term used in Wales in the same sense as "hundred" is in England. Cowell; Termes de la Ley.

CANUM. In feudal law. A species of duty or tribute payable from tenant to lord, usually consisting of produce of the land.

CANVASS. The act of examining and counting the returns of votes cast at a public election. Bowler v. Eisenhood, 1 S.Dak. 577, 48 N.W. 136, 12 L.R.A. 705; In re Stewart, 24 App.Div. 201, 48 N.Y.S. 957.

CANVASSER. Any of certain persons, as officers of a state, county, or district, intrusted with the duty of examining the returns of votes cast at an election. See Canvass.

One who, in a given town, city, or county, goes from house to house in an effort to take orders for goods; in this sense, to be distinguished from traveling salesmen. City of El Dorado Springs v. Highfill, 268 Mo. 501, 188 S.W. 68.

CAP. In mining, a square piece of plank or block wedged between the top of posts or props and the roof of the mine. Big Branch Coal Co. v. Wrenchie, 160 Ky. 668, 170 S.W. 14, 16.

CAP BOARD. Board about fourteen inches long and about four inches wide which is placed on top of a pillar in mines to prevent pillar from breaking through slate when weight comes against it. Hall v. Proctor Coal Co., 236 Ky. 813, 34 S.W.2d 425, 426.

CAP OF MAINTENANCE. One of the regalia or ornaments of state belonging to the sovereigns of England, before whom it is carried at the coronation and other great solemnities. Caps of maintenance are also carried before the mayors of several cities in England. Enc.Lond.

CAPABLE. Susceptible; competent; qualified; fitting; possessing legal power or capacity. United States v. Sischo, D.C.Wash., 262 F. 1001, 1005. Able, fit or adapted for. U. S. v. Sischo, C.C.A. Wash., 270 F. 958, 961; State v. Wharton, 132 Kan. 409, 295 P. 656, 658. "Capable of contracting" as meaning legally capable, not mentally capable. Szwed v. Morris & Co., 187 Mo.App. 510, 174 S.W. 146, 148.

CAPACITY. A word having many meanings, dependent on its relationship to the subject-matter. Campbell v. Cornish, 163 Okl. 213, 22 P.2d 63.

It may mean: ability; actual production of an oil well, Hells v. Ward, D.C.La., 20 F.Supp. 514, 517; an intelligent perception and understanding of the dispositions made of property, etc., In re Null's Estate, 302 Pa. 64, 153 A. 137, 139. Qualification; size, space, or compass, strength, power or force, Campbell v. Cornish, 163 Okl. 213, 22 P.2d 63; sound mind, Chambers v. Winn, Tex.Civ.App., 133 S.W.2d 279, 282; the attribute of persons which enables them to perform civil or juristic acts. Sargent v. Burdett, 96 Ga. 111, 22 S.E. 667; 2 Com.Dig. 294.

"Capacity to sue" consists in right to come into court, Braden v. Neal, 132 Kan. 387, 295 P. 678, 680.

"Public capacity" of municipal property is such capacity as all the people of the state are alike interested in. Board of Com'rs of Woodward County v. Willett, 49 Okl. 254, 152 P. 365, 366, L.R.A.1916E, 92.

CAPAX DOLL. Lat. Capable of committing crime, or capable of criminal intent. The phrase describes the condition of one who has sufficient intelligence and comprehension to be held criminally responsible for his deeds.

CAPAX NEGOTII. Competent to transact affairs; having business capacity.

CAPE. In English practice. A judicial writ, now abolished, touching a plea of lands or tenements.

It was divided into *cape magnum,* or the *grand cape,* which lay before appearance to summon the tenant to answer the default, and also over to the demandant and *cape parvum,* or *petit cape,* after appearance or view granted, summoning the tenant to answer the default only. Termes de la Ley; 3 Steph.Comm. 606, note; Fleta, *1.* 6, c. 55, § 40; 2 Wms.Saund. 45 *c,* d; Rose. Real Act. 165, et seq. It was called a "cape," from the word with which it commenced, and a "grand cape" (or *cape magnum)* to distinguish it from the *petit cape,* which lay after appearance.

CAPE AD VALENTIAM. A species of *cape magnum.*

CAPELLA. In old records. A box, cabinet, or repository in which were preserved the relics of martyrs. Spelman. A small building in which relics were preserved; an oratory or chapel. Id.

In old English law. A chapel. Fleta, lib. 5, c. 12, § 1; Spelman; Cowell.

CAPERS. Vessels of war owned by private persons, and different from ordinary privateers only in size, being smaller. Beawes, Lex Mere. 230.

CAPIAS. Lat. "That you take." The general name for several species of writs, the common characteristic of which is that they require the officer to take the body of the defendant into custody; they are writs of attachment or arrest.

In English practice, the process on an indictment when the person charged is not in custody, and in cases not otherwise provided for by statute. 4 Steph.Comm. 383.

Capias Ad Audiendum Judicium

A writ issued, in a case of misdemeanor, after the defendant has appeared and is found guilty, to bring him to hear judgment if he is not present when called. 4 Bl.Comm. 368.

### Capias Ad Computandum

In the action of account render, after judgment of *quod computet,* if the defendant refuses to appear personally before the auditors and make his account, a writ by this name may issue to compel him. The writ is now disused. See Thesaurus Brevium, 38; Coke, Entries, 46, 47, Rastell, Entries, 14 b. 15.

### Capias Ad Respondendum

A judicial writ, (usually simply termed a *"capias,"* and commonly abbreviated to *ca. resp.)* by which actions at law were frequently commenced; and which commands the sheriff to *take* the defendant, and him safely keep, so that he may have his body before the court on a certain day, to *answer* the plaintiff in the action. 3 Bl.Comm. 282; 1 Tidd, Pr. 128. It notifies defendant to defend suit and procures his arrest until security for plaintiff's claim is furnished. Null v. Staiger, 333 Pa. 370, 4 A.2d 883, 885.

### Capias Ad Satisfaciendum

A writ of execution, (usually termed, for brevity, a *"ca. sa.,")* which commands the sheriff to *take* the party named, and keep him safely, so that he may have his body before the court on a certain day, *to satisfy* the damages or debt and damages in certain actions. It deprives the party taken of his liberty until he makes the satisfaction awarded. 3 Bl.Comm. 414, 415; 2 Tidd, Pr. 993, 1025; Litt. § 504; Co.Litt. 289a; Strong v. Linn, 5 N.J.Law, 803. As 'a rule it lay in all cases where a *capias ad respondendum* lay. It was a very common form of execution; but its efficiency has been destroyed by statutes.

### Capias Extendi Facias

A writ of execution issuable in England against a debtor to the crown, which commands the sheriff to "take" or arrest the body, and "cause to be extended" the lands and goods of the debtor. Man.Exch.Pr. 5.

### Capias in Withernam

A writ, in the nature of a reprisal, which lies for one whose goods or cattle, taken under a distress, are removed from the county, so that they cannot be replevied, commanding the sheriff to seize other goods or cattle of the distrainor of equal value.

### Capias Pro Fine

(That you take for the fine or in mercy.) Formerly, if the verdict was for the defendant, the plaintiff was adjudged to be amerced for his false claim; but, if the verdict was for the plaintiff, then in all actions vi *et armis,* or where the defendant, in his pleading, had falsely denied his own deed, the judgment contained an award of a *capiatur pro fine;* and in all other cases the defendant was adjudged to be amerced. The insertion of the *misericordia* or of the *capiatur* in the judgment is now unnecessary. Wharton; 8 Coke, 60; 11 Coke, 43; Co.Litt. 131; 3 Bl.Comm. 398; 5 Mod. 285. A writ in all respects an execution for collection of fine. Board of Councilmen of City of Frankfort v. Rice, 249 Ky. 771, 61 S.W.2d 614, 615.

### Capias Utlagatum

(You take the outlaw.) In English practice. A writ which lies against a person who has been *outlawed* in an action, by which the sheriff is commanded to *take* him, and keep him in custody until the day of the return, and then present him to the court, there to be dealt with for his contempt. Reg.Orig. 138b; 3 Bl.Comm. 284.

CAPIATUR PRO FINE. (Let him be taken for the fine.) In English practice. A clause inserted at the end of old judgment records in actions of debt, where the defendant denied his deed, and it was found against him upon his false plea, and the jury were troubled with the trial of it. Cro. Jac. 64. See Capias pro Fine.

CAPITA. Heads, and, figuratively, entire bodies, whether of persons or animals. Spelman.

Persons individually considered, without relation to others, (polls ;) as distinguished from *stirpes* or stocks of descent. The term in this sense, making part of the common phrases, *in capita, per capita,* is derived from the civil law. Inst. 3, 1, 6.

CAPITA, PER. By heads; by the poll; as individuals. In the distribution of an intestate's personalty, the persons legally entitled to take are said to take *per capita,* that is, equal shares, when they claim, each in his own right, as in equal degree of kindred; in contradistinction to claiming by right of representation, or *per stirpes.*

CAPITAL, n. The word may have different meanings when used in different connections. Commissioner of Corporations and Taxation v. Filoon, 310 Mass. 374, 38 N.E.2d 693, 699, 700, 705.

It may mean : actual property or estate, People v. Com'rs of Taxes, 23 N.Y. 192; State ex rel. Corinne Realty Co. v. Becker, 320 Mo. 908, 8 S.W.2d 970, 972. Aggregate of property, Southern Package Corporation v. State Tax Commission, 195 Miss. 864, 15 So.2d 436; all capital invested plus surplus or undivided profits, W. A. Gordon & Co. v. Lines, D.C.La., 25 F.2d 894, 895; amount, or value, of property up to par value of paid up issued shares or stated value of no-par shares, Randall v. Bailey, 23 N.Y.S.2d 173, 182; assets, Pace v. Pace Bros. Co., 91 Utah, 149, 63 R2d 590, 591. Capital stock, Security State Bank v. Breen, 277 N.W. 497, 500, 65 S.D. 640; condemnation award, In re Wacht's Estate, 32 N.Y.S.2d 871, 903, 904; contributions by partners, M. & C. Creditors Corporation v. Pratt, 17 N.Y.S.2d 240, 258, 259, 172 Misc. 695. Dividends earned before creation of trust, Hubley's Guardian Ad Litem *v.* Wolfe, 259 Ky. 574, 82 S.W.2d 830, 834, 101 A.L.R. 1359; dividends received by trustee stockholder in liquidation of corporation, Anderson v. Bean, 272 Mass. 432, 172 N.E. 647, 651, 72 A.L.R. 959; extraordinary dividends paid on reducing value of stock, In re Sears' Will, 26 N.Y.S.2d 912, 915, 176 Misc. 242. Fund, Civ.Code, art. 148. French v. Wolf, 181 La. 733, 160 So. 396, Webb v. Armistead, C.C.Va., 26 F. 70; gain from sale of realty, United States v. National City Bank of New York, D.C.N.Y., 21 F.Supp. 791, 794; means contributed by share owners, Parkinson v. State Bank of Millard *County,* 84 Utah, 278, 35 P.2d 814, 820, 94 A.L.R. 1112; money invested at interest; money required of partners by agreement, M. & C. Creditors Corporation v. Pratt, 17 N.Y.S.2d 240, 258, 259, 172 Misc. 695; money which one adventures in an undertaking; paid-up issued shares of stock, Newfield v. Stieglitz, D.C.N.Y., 47

F.Supp. 885, 886; place where legislative department holds its sessions and where chief offices of the executive are located; political and governmental metropolis; preferred stock received as dividend, Burns v. Hines, 298 Ill.App. 563, 19 N.E.2d 382, 392; principal sum of a fund of money; proceeds of sale or exchange of capital of trust property, In re Clarke's Will, 204 Minn. 574, 284 N.W. 876, 879; property, Putnam v. U. S., C.C.A.Mass., 149 F.2d 721, 726; repayment of a debt, Philadelphia Nat. Bank v. Rothensies, D.C.Pa., 43 F.Supp. 923, 925; seat of government; stock dividends, Gray v. Hemenway, 268 Mass. 515, 168 N.E. 102, 103; subscribed, paid-up capital, Child v. Ogden State Bank, 81 Utah, 464, 20 P.2d 599, 607, 88 A.L.R. 1284; sum formed when profits apportioned to building and loan association shares coalesce with dues paid, In re Sixth Ward Buildina & Loan Ass'n of Newark, 134 N.J.Eq. 98, 34 A.2d 292, 295; sum total of corporate stock, Haggard v. Lexington Utilities Co., 260 Ky. 261, 84 S.W.2d 84, 87; surplus used as capital, Feeders' Supply Co. v. Commissioner of Internal Revenue, C.C.A.8, 31 F.2d 274, 278; unamortized debt discount and expense, State Tax Commission v. Mississippi Power & Light Co., 194 Miss. 260, 11 So.2d 828, 829.

In political economy, that portion of the produce of industry existing in a country, which may be made directly available, either for the support of human existence, or the facilitating of production.

The term does not embrace temporary loans. Bailey v. Clark, 21 Wall. 286, 22 L.Ed. 651. But see Bridgewater Mfg. Co. v. Funkhouser, 115 Va. 476, 79 S.E. 1074, 1075.

Income is the fruit of capital; capital is the source of income. Carter v. Rector, 88 Okl. 12, 210 P. 1035, 1037.

As to what is moneyed capital in a federal act respecting state taxation of national bank stock, see First Nat, Bank v. Chapman, 173 U.S. 214, 19 S.Ct. 407, 43 L.Ed. 669.

CAPITAL, *adj.* Affecting or relating to the head or life of a person; entailing the ultimate penalty. Principal; leading; chief; as "capital burgess." 10 Mod. 100.

### Capital Assets

All capital invested plus surplus or undivided profits. Williams v. McGowan, D.C.N.Y., 58 F. Supp. 692, 694, 695; Assets of a permanent or fixed nature or employed in carrying on business or trade. Rathborne v. Collector of Revenue, 196 La. 795, 200 So. 149, 153, 154; goodwill, Williams v. McGowan, D.C.N.Y., 58 F.Supp. 692, 694, 695, Commissioner of Internal Revenue v. Shapiro, C.C.A.6, 125 F.2d 532, 535, 536; property acquired and held for profit or investment for more than two years. Sommers v. Commissioner of Internal Revenue, C.C.A.10, 63 F.2d 551, 553; title to property held for profit. Jones' Estate v. Commissioner of Internal Revenue, C.C.A.Tex., 127 F.2d 231, 232.

### Capital Case or Crime

One in or for which death penalty may, but need not necessarily, be inflicted, Lee v. State, 31 Ala.App. 91, 13 So.2d 583, 587.

### Capital Expenditure

Cost of construction made with expectation of existence for an indefinite period, E. W. Edwards & Son v. Clarke, D.C.N.Y., 29 F.Supp. 671, 672, 673-, expenditure in nature of an investment for the future, Marin Union Junior College Dist. v. Gwinn, 106 Cal.App. 12, 288 P. 799, 800.

### Capital Gains

Additions to principal, Holcombe v. Ginn, 296 Mass. 415, 6 N.E.2d 351, 108 A.L.R. 1134; gains from sale of capital assets in excess of appraisal values or costs, In re Talbot's Will, 170 Misc. 138, 9 N.Y.S.2d 806, 810.

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### Capital Impairment

Reduction of assets of corporation below aggregate of outstanding shares of capital stock. Ashman v. Miller, C.C.A.Mich., 101 F.2d 85, 90.

### Capital Increase

An increase not attributable to earnings. In re Lueders' Estate, 337 Pa. 155, 10 A.2d 415, 417.

### Capital Investment

Acquisition price of a "capital asset", Commissioner of Internal Revenue v. Rowan Drilling Co., C.C.A.Tex., .130 F.2d 62, 64, 65; capital stock, surplus and undivided profits, O'Connor v. Bankers Trust Co., 159 Misc. 920, 289 N.Y.S. 252, 276; money spent to increase an asset. Peerless Stages v. Commissioner of Internal Revenue, C.C.A.9, 125 F.2d 869, 871.

### Capital Outlay

Money expended in 'acquiring, equipping, and promoting an enterprise. Rideout v. Eich, 105 Cal.App. 597, 288 P. 450, 454.

### Capital Punishment

Punishment of death. Ex parte Herndon, 18 Okl.Cr. 68, 192 P. 820, 19 A.L.R. 804, State v. Johnston, 83 Wash, 1, 144 P. 944, 945.

### Capital Recovery

Collection of charged-off bad debt where reserve account system is used. National Bank of Tulsa v. Oklahoma Tax Commission, Okl., 145 P.2d 768, 771, 772,

### Capital Stock

The term has various meanings.

It may mean : amount fixed by charter to be subscribed and paid in or secured to be paid in by shareholders. State ex rel. Corinne Realty Co. v. Becker, 320 Mo. 908, 8 S.W.2d 970, 971. Amount of stock that corporation may issue. Schwemer v. Fry, 212 Wis. 88, 249 N.W. 62, 90 A.L.R. 308; amount subscribed, contributed or secured to be paid in. Haggard v. Lexington Utilities Co., 260 Ky. 261, 84 S.W. 2d 84, 87; Person v. Board of State Tax Com'rs, 184 N.C. 499, 115 S.E. 336, 346; capital, Central Illinois Public Service Co. v. Swartz, 284 Ill. 108, 119 N.E. 990, 992; Louisville & *N.* R. Co. v. Bosworth, D.C.Ky., 209 F. 380, 411, corporate assets or property, Bates v. Daley's Inc., 5 Cal. App.2d 95, 42 P.2d 706, 709; evidence of rights in property. Southern Package Corporation v. State Tax Commission, 195 Miss. 864, 15 So.2d 436; fund employed in carrying on business or enterprise, Chicago, M., St. P. & P. R. v. Harmon, 89 Mont. 1, 295 P. 762, 769: liability of the corporation to its shareholders, after creditors' claims have been liquidated, Department of Treasury of Indiana v. Crowder, 214 Ind. 252, 15 N.E.2c1 89, 91; valuation of the corporation as a business enterprise, Commonwealth *v.* Columbia Gas & Electric Corporation, 336 Pa. 209, 8 A.2d 404, 410.

### Capital Stock Tax

Tax on privilege of doing business, Wisconsin Cent. Ry. Co. v. U. S., Ct.C1., 41 F.2d 870, 885.

Capital Surplus

Property paid into corporation by shareholders in excess of capital stock liability. Commissioner of Corporations and Taxation v. Filoon, 310 Mass. 374, 38 N.E.2d 693, 699, 700.

CAPITALE. A thing which is stolen, or the value of it. Blount.

CAPITALE VIVENS. Live cattle. Blount.

CAPITALIS. In old English law. Chief ; principal; at the *head.* A term applied to persons, places, judicial proceedings, and some kinds of property.

CAPITALIS BARO. In old English law. Chief baron. *Capitalis baro scaccarii domini, regis,* chief baron of the exchequer. Townsh.Pl. 211.

CAPITAL'S CUSTOS. Chief warden or magistrate; mayor. Fleta, lib. 2, c. 64, § 2.

CAPITAL'S DEBITOR. The chief or principal debtor, as distinguished from a surety, *(plegius.)*

CAPITALIS DOMINUS. Chief lord. Fleta, lib. 1, c. 12, § 4; Id. c. 28, § 5.

CAPITALIS JUSTICIARIUS. The chief justiciary; the principal minister of state, and guardian of the realm in the king's absence.

This office originated under William the Conqueror ; but *its* power was greatly diminished by *Magna Charta,* and finally distributed among several courts by Edward I. Spelman; 3 Bl.Comm. 38.

CAPITALIS JUSTICIARIUS AD PLACITA CORAM REGE TENENDA. Chief justice for holding pleas before the king. The title of the chief justice of the king's bench, first assumed in the latter part of the reign of Henry III. 2 Reeve, Eng. Law, 91, 285.

CAPITALIS JUSTICIARIUS BANCI. Chief justice of the bench. The title of the chief justice of the (now) court of common pleas, first mentioned in the first year of Edward I. 2 Reeve, Eng.Law, 48.

CAPITALIS JUSTICIARIUS TOTIUS ANGLIIE. Chief justice of all England. The title of the presiding justice in the court of *aula regis.* 3 Bl.Comm. 38; 1 Reeve, Eng.Law, 48.

CAPITALIS PLEGIUS. A chief pledge; a head borough. Townsh.P1. 35.

CAPITALIS REDITUS. A chief rent.

CAPITAL'S TERRA. A head-land. A piece of land lying at the head of other land.

CAPITALIST. One exclusively dependent on accumulated property, whether denoting a person of large wealth or one having an income from investments. Elliott v. Frankfort Marine, Accident & Plate Glass Ins. Co. of Frankfort-on-the-Main, Germany, 172 Cal. 261, 156 P. 481, 483, L.R.A. 1916F, 1026. The word has no legal meaning. In re Green's Estate, 109 Misc. 112, 178 N.Y.S. 353, 361.

CAPITALIZATION METHOD. A method of measuring values of realty for purpose of determining values of mortgages by expertly estimating the gross income which property should throw off, and separately the expenses reasonably required to carry it, and thus arriving at a fair estimate of net income and using a capitalization figure or factor, expertly chosen. Depreciation must be taken into consideration in use of such method. In re New York Title & Mortgage Co. (Series B-K), 21 N.Y.S.2d 575, 594, 595.

CAPITALIZE. In one sense, to convert a periodical payment into a sum in hand. Brown v. Erie R. Co., 87 N.J.Law, 487, 91 A. 1023, 1026, Ann.Cas. 1917C, 496.

CAPITANEUS. A tenant *in capite.* He who held his land or title directly from the king himself. A captain; a naval commander. This latter use began A. D. 1264. Spelman, Gloss. *Capitaneus, Admiralius.* A commander or ruler over others, either in civil, military, or ecclesiastical matters.

CAPITARE. In old law and surveys. To head, front, or abut; to touch at the head, or end.

CAPITATIM. Lat. By the head; by the poll; severally to each individual.

CAPITATION TAX. A poll tax. A tax or imposition upon the person. Leedy v. Bourbon, 12 Ind. App. 486, 40 N.E. 640; Hattiesburg Grocery Co. v. Robertson, 126 Miss. 34, 88 So. 4, 5, 25 A.L.R. 748. It is a very ancient kind of tribute, and answers to what the Latins called *"tributum,"* by which taxes on persons are distinguished from taxes on merchandise, called *"vectigalia."* Wharton.

CAPITE. Lat. By the head.

Tenure *in capite* was an ancient feudal tenure, whereby a man held lands of the king immediately. It was of two sorts,—the one, principal and general, or of the king as the source of all tenure ; the other, special and subaltern, or of a particular subject. It is now abolished. Jacob. As to distribution *per capita,* see Capita, per.

CAPITE MINUTUS. In the civil law. One who had suffered *capitis diminutio,* one who lost *status* or legal attributes. See Dig. 4, 5.

CAPITIS DIMINUTIO. In Roman law. A diminishing or abridgment of personality; a loss or curtailment of a man's *status* or aggregate of legal attributes and qualifications.

CAPITIS DIMINUTIO MAXIMA. The highest or most comprehensive loss of *status.* This occurred when a man's condition was changed from one of freedom to one of bondage, when he became a slave. It swept away with it all rights of citizenship and all family rights.

CAPITIS DIMINUTIO MEDIA. A lesser or medium loss of status. This occurred where a man lost his rights of citizenship, but without losing his liberty. It carried away also the family rights.

CAPITIS DIMINUTIO MINIMA. The lowest or least comprehensive degree of loss of *status.* This

occurred where a man's family relations alone were changed. It happened upon the arrogation of a person who had been his own master, (sui *juris,)* or upon the emancipation of one who had been under the *patria potestas.* It left the rights of liberty and citizenship unaltered. See Inst. 1, 16, pr.; 1, 2, 3; Dig. 4, 5, 11; Mackeld.Rom.Law, § 144.

CAPITITIUM. A covering for the head, mentioned in St. 1 Hen. IV. and other old statutes, which prescribe what dresses shall be worn by all degrees of persons. Jacob.

CAPITULA. Collections of laws and ordinances drawn up under heads of divisions. Spelman. The term is used in the civil and old English law, and applies to the ecclesiastical law also, meaning chapters or assemblies of ecclesiastical persons. Du Cange. The *Royal and Imperial Capitula* were the edicts of the Frankish Kings and Emperors.

CAPITULA CORONAE. Chapters of the crown. Chapters or heads of inquiry, resembling the *capitula itineris (infra)* but of a more minute character.

CAPITULA DE JUDIE'S. A register of mortgages made to the Jews. 2 Bl.Comm. 343; Crabb, Eng.Law, 130, et seq.

CAPITULA ITINERIS. Articles of inquiry which were anciently delivered to the justices in eyre when they set out on their circuits. These schedules were designed to include all possible varieties of crime. 2 Reeve, Eng.Law, p. 4, c. 8.

CAPITULA RURALIA. Assemblies or chapters, held by rural deans and parochial clergy, within the precinct of every deanery; which at first were every three weeks, afterwards once a month, and subsequently once a quarter. Cowell.

CAPITULARY. In French law. A collection and code of the laws and ordinances promulgated by the kings of the Merovingian and Carlovingian dynasties.

Any orderly and systematic collection or code of laws.

In ecclesiastical law. A collection of laws and ordinances orderly arranged by divisions. A book containing the beginning and end of each Gospel which is to be read every day in the ceremony of saying mass. Du Cange.

CAPITULATION. In military law. The surrender of a fort, fortified town, or army in the field to a besieging or opposing army; the treaty or agreement between the commanding officers which embodies the terms and conditions on which the surrender is made.

In international law. *Capitulations* is the name used for treaty engagements between the Turkish government and the principal states of Europe by which subjects of the latter, residents in the territory of the former, were exempt from the laws of the places where they dwelt. 1 Kinglake, Invasion of Crimea 116.

"The 'usages of the Franks' begin In what are known in international law as 'the capitulations,' granting rights of exterritoriality to Christians residing or traveling in Mohammedan countries. * * * By these * * * capitulations a usage was established that Franks [a generic name for all participants in such privileges], being in Turkey, whether domiciled or temporarily, should be under the jurisdiction, civil and criminal, of their respective ministers and consuls." Dainese v. United States, 15 Ct.C1. 64.

In the civil law. An agreement by which the prince and the people, or those who have the right of the people, regulate the manner in which the government is to be administered. Wolffius, § 989.

CAPITULI AGRI. Head-fields; lands lying at the head or upper end of furrows, etc.

CAPITULUM. Lat. A leading division of a book or writing; a chapter; a section. Tert.Adv.Jud. 9, 19. Abbreviated, Cap.

CAPITULUM EST CLERICORUM CONGREGATIO SUB UNO DECANO IN ECCLESIA CATHEDRAL'. A chapter is a congregation of clergy under one dean in a cathedral church. Co.Litt. 98.

CAPPA. In old records. A cap. Cappa *honoris,* the cap of honor. One of the solemnities or ceremonies of creating an earl or marquis.

CAPPER. A decoy or lure for purpose of swindling. Barron v. Board of Dental Examiners of California, 109 Cal.App. 382, 293 P. 144, 145.

CAPRICIOUS DISBELIEF. A willful, deliberate disbelief of an apparently trustworthy witness. Popilock v. Piernikoski, 161 Pa.Super. 587, 56 A. 2d 326, 328.

CAPTAIN. A head-man; commander; commanding officer.

The captain of a war-vessel is the officer first In command. In the United States navy, the rank of "captain" is intermediate between that of "commander" and "commodore." The governor or controlling officer of a vessel in the merchant service is usually styled "captain" by the inferior officers and seamen, but in maritime business and admiralty law is perhaps more commonly designated as "master." In foreign jurisprudence his title is often that of "patron." In the United States army (and the militia) the captain is the commander of a company of soldiers, one of the divisions of a regiment. The term is also used to designate the commander of a squad of municipal police.

The "captain of the watch" on a vessel is a kind of foreman or overseer and is an officer within statutes regulating conduct of officers to seamen. U. S. v. Trice, D.C.Tenn., 30 Fed. 491.

CAPTATION. In French law. The act of one who succeeds in controlling the will of another, so as to become master of it; used in an invidious sense. Succession of Schlumbrecht, 138 La. 173, 70 So. 76, 79.

It Was formerly applied to the first stage of the hypnotic or mesmeric trance.

CAPTATOR. A person who obtains a gift or legacy through artifice. See Captation.

CAPTIO. In old English law and practice. A taking or seizure; arrest; receiving; holding of court.

CAPTION. In Practice. That part of a legal instrument, as a commission, indictment, etc., which shows where, when, and by what authority it is taken, found, or executed. U. S. v. Beebe, 2 Dak, 292, 11 N.W. 505.

When used with reference to an indictment, • caption signifies the style or preamble or commencement of the indictment; when used with reference to a commission, it signifies the certificate to which the commissioners' names are subscribed, declaring when and where it was executed. Brown. The caption is not a part of the indictment, Brown v. Hudspeth, C.C.A.Kan., 103 F.2d 958, 959, but is the formal history of its finding, and is to be distinguished from the introductory portion. Harrington v. U. S., C.C.A. Iowa, 267 F. 97, 100. Caption of indictment is entry of record showing when and where court is held, who presided, venire and indorsements, and who were summoned and sworn as grand jurors. Williams v. State, 20 Ala.App. 26, 100 So. 573, 574.

The caption of a pleading, deposition, or other paper connected with a case in court, is the heading or introductory clause which shows the names of the parties, name of the court, number of the case on the docket or calendar, etc. Quoted with approval in St. Louis Lightning Rod Co. v. Johnson, 18 Ga.App. 190, 89 S.E. 169, 170. The terms "title" and "caption" are synonymous. Id. The caption of depositions should state the title of the cause, the names of the parties, and at whose instance the depositions are taken ; Knight v. Nichols, 34 Me. 208. See Waskern v. Diamond, 1 Hemp. 701, Fed.Cas.No.17,248. Generally, the title or caption is not part of the pleading, unless expressly made so by reference in the body thereof. Jackson v. Ashton, 8 Pet. 148, 8 L.Ed. 898.

Also signifies a taking, seizure, or arrest of a person. 2 Salk. 498. The word in this sense is now obsolete in English law.

In Scotch law. Caption is an order to incarcerate a debtor who has disobeyed an order, given to him by what are called "letters of horning," to pay a debt or to perform some act enjoined thereby. Bell.

CAPTIVES. Prisoners of war. As in the goods of an enemy, so also in his person, a sort of qualified property may be acquired, by taking him a prisoner of war, at least till his ransom be paid. 2 Al.Comm. 402.

CAPTOR. In international law. One who takes or seizes property in time of war; one who takes the property of an enemy. In a stricter sense, one who takes a prize at sea. 2 Bl.Comm. 401; 1 Kent, Comm. 86, 96, 103. Consult Oakes v. U. S., 174 U.S. 778, 19 S.Ct. 864, 43 L.Ed. 1169. The term also designates a belligerent who has captured the person of an enemy.

CAPTURE. In international law. The taking or wresting of property from one of two belligerents by the other. Also a taking of property by a belligerent from an offending neutral.

In some cases, this is a mode of acquiring property. Thus every one may, as a general rule, on his own land, or on the sea, capture any wild animal, and acquire a qualified ownership in it by confining it, or absolute ownership by killing it. 2 Steph.Comm. 79.

Capture, in technical language, is a taking by military power; a seizure is a taking by civil authority. U. S. v. Athens Armory, 35 Ga. 344, Fed.Cas.No.14,473.

The sequestering of alien enemy property under vesting orders by the alien property custodian is in the nature of a "capture". Crowley v. Allen, D.C.Cal., 52 F.Supp. 850, 852.

CAPUT. A head; the head of a person; the whole person; the life of a person; one's personality; *status;* civil condition.

At common law. A head. *Caput comitatis,* the head of the county; the sheriff; the king. Spelman. A person; a life. The upper part of a town. Cowell. A castle. Spelman.

Capitis aestimatio. In Saxon law. The estimation or value of the head, that is, the price or value of a man's life.

Caput anni. The first day (or beginning) of the year.

Caput baronim. The castle or chief seat of a baron.

Caput jejunii. The beginning of the Lent fast, *e.,* Ash Wednesday.

Caput loci. The head or upper part of a place.

Caput lupinum. In old English law. A wolf's head. An outlawed felon was said to be *caput lupinum,* and might be knocked on the head like a wolf. 4 Bla.Comm. 320, 284.

Caput mortuum. A dead head; dead; obsolete.

Caput portus. In old English law. The head of a port. The town to which a port belongs, and which gives the denomination to the port, and is the head of it. Hale de Jure Mar. pt. 2, *(de portubus maris,)* c. 2.

Caput, principium, et finis. The head, beginning, and end. A term applied in English law to the king, as head of parliament. 4 Inst. 3; 1 Bl. Comm. 188.

In civil law. It signified a person's civil condition or *status,* and among the Romans consisted of three component parts or elements,—libertas, liberty; *civitas,* citizenship; and *familia,* family.

CAPUTAGIUM. In old English law. Head or poll money, or the payment of it. Cowell; Blount; Spelman, Gloss.

CAPUTIUM. In old English law. A head of land; a headland. Cowell.

CAR. A vehicle primarily intended for transportation of persons or freight, Hall v. Federal Life Ins. Co., Mo.App., 71 S.W.2d 762, 764; a vehicle moved on wheels, Burrus v. Continental Life Ins. Co., 225 Mo.App. 1129, 40 S.W.2d 493, 494.

The term may include a vehicle adapted to running on the rails of a railroad. State v. Tardiff, 111 Me. 552, 90 A. 424, 425, L.R.A.1915A, 817; a hand car, Boyd v. Missouri Pac. Ry. Co., 249 Mo. 110, 155 S.W. 13, 17, Ann.Cas.1914D, 37; a locomotive, U. S. v. Philadelphia & R. Ry. Co., D.C. Pa., 223 F. 215, 216; a tender and locomotive, Pennell v. Philadelphia & Reading Railway Co., 231 U.S. 675, 34 S.Ct. 220, 58 L.Ed. 430; an automobile. Monroe's Adm'r v. Federal Union Life Ins. Co., 251 Ky. 570, 65 S.W.2d 680, 681.

Car Load

The quantity usually contained in an ordinary car used for transporting the particular commodi-

ty involved. Ward v. Cotton Seed Products Co., 193 Ala. 101, 69 So. 514, 515.

General Service Cars

Cars serviceable as flat or gondola cars and also as dump cars. National Dump Car Co. v. Pullman Co., C.C.A.Ill., 228 F. 122, 124.

CAR TRUST CERTIFICATES, OR SECURITIES. A class of investment securities based upon the conditional sale or hire of railroad cars or locomotives with a reservation of title or lien in the vendor or bailor until the property is paid for. See Fidelity Trust Co. v. Lederer, D.C.Pa., 276 F. 51; Commonwealth v. Philadelphia Rapid Transit Co., 287 Pa. 190, 134 A. 455.

CARABUS. In old English law. A kind of raft or boat. Spelman.

CARAT. A measure of weight for diamonds and other precious stones, equivalent to three and one-sixth grains Troy, though divided by jewelers into four parts called "diamond grains." Also a standard of fineness of gold, twenty-four carats being conventionally taken as expressing absolute purity, and the proportion of gold to alloy in a mixture being represented as so many carats.

CARBON COPY. A copy, as of a letter, produced by placing a sheet of carbon paper between two sheets of letter paper, so that the same impression produces both the letter and the carbon copy. Engles v. Blocker, 127 Ark. 385, 192 S.W. 193, 195. See, also, Copy.

CARBONIC ACID, See Choke damp.

CARCAN. In French law. An instrument of punishment, somewhat resembling a pillory. It sometimes signifies the punishment itself. Biret, Vocab.

CARCANUM. A gaol; a prison.

CARCARE. In old English law. To load; to load a vessel; to freight.

CARCATUS. Loaded; freighted, as a ship.

CARCEL-AGE. Gaol-dues; prison-fees.

CARCER. A prison or gaol. Strictly, a place of detention and safe-keeping, and not of punishment. Co.Litt. 620.

CARCER AD HOMINES CUSTODIENDOS, NON AD PUNIENDOS, DARI DEBET. A prison should be used for keeping persons, not for punishing them. Co.Litt. 260a. See Dig. 48. 19. 8. 9.

CARCER NON SUPPLICII CAUSÃ, SED CUSTODIÆ. A prison is ordained not for the sake of punishment, but of detention and guarding. Lofft, 119.

CARDINAL. In ecclesiastical law. A dignitary of the court of Rome, next in rank to the pope. There are cardinal bishops, cardinal priests, and cardinal deacons. See Fleury, *Hist. Eccles.* liv. xxxv. n. 17, li. n. 19; Thomassin, part. ii. liv. i. c. 53, part. iv. liv. i. cc. 79, 80; Loiseau, *Traite des Ordres,* c. 3, n. 31; Andre *Droit Canon.*

CARDS. In criminal law. Small papers or pasteboards of an oblong or rectangular shape, on which are printed figures or points, used in playing certain games. See State v. Lewis, 12 Wis. 434.

CARE. Attention, Seaman v. State, 106 Ohio St. 177, 140 N.E. 108, 111, Lustenberger v. Boston Casualty Co., Mass., 14 N.E.2d 148, 151, 115 A.L.R. 1055; charge, Emery v. Wheeler, 152 A. 624, 626, 129 Me. 428, Lustenberger v. Boston Casualty Co., Mass., 14 N.E.2d 148, 151, 115 A.L.R. 1055; custody, Madison v. State, 163 Tenn. 198, 42 S.W.2d 209, Fox West Coast Theatres v. Union Indemnity Co., 167 Wash. 319, 9 P.2d 78, 81; diligence; discretion; heed, caution, concern, Northern Indiana Power Co. v. West, 218 Ind. 321, 32 N.E.2d 713, 720; inclination, wish or disposition, Stella v. Downyflake Restaurant, 126 Conn. 441, 11 A.2d 848, 849; maintenance, Stafford v. Stovall, 109 Okl. 234, 235 P. 238, 239; management, Seaman v. State, 106 Ohio St. 177, 140 N.E. 108, 111; opposite of negligence or carelessness, Raymond v. Portland R. Co., 100 Me. 529, 62 A. 602, 605, 3 L.R.A.,N.S., 94; oversight, Emery v. Wheeler, 129 Me. 428, 152 A. 624, 626, Madison v. State, 163 Tenn. 198, 42 S.W.2d 209; prudence, Quanah, A. & P. Ry. Co. v. Eblen, Tex.Civ.App., 55 S.W.2d 1060, 1063; regard, Lustenberger v. Boston Casualty Co., Mass., 14 N.E.2d 148, 151, 115 A.L.R. 1055, Arnold v. United States, C.C.A.Colo., 94 F.2d 499, 505; safekeeping, preservation, security, Fox West Coast Theatres v. Union Indemnity Co., 167 Wash. 319, 9 P.2d 78, 81; to cause to have care; to trouble; to care for; to regard. Arnold v. United States, C.C.A.Colo., 94 F.2d 499, 505; vigilance; watchfulness.

There are three degrees of care which are frequently recognized, corresponding (inversely) to the three degrees of negligence, viz. : slight care, ordinary care, and great care.

Slight care is such as persons of ordinary prudence usually exercise about their own affairs of slight importance. 25 Okl.St.Ann. § 4. Or it is that degree of care which a person exercises about his own concerns, though he may be a person of less than common prudence or of careless and inattentive disposition. Litchfield v. White, 7 N.Y. 442, 57 Am.Dec. 534; Bank v. Guilmartin, 93 Ga. 503, 21 S.E. 55, 44 Arn.St.Rep. 182.

Ordinary care is that degree of care which persons of ordinary care and prudence are accustomed to use and employ, under the same or similar circumstances. Gunn v. Railroad Co., 36 W.Va. 165, 14 S.E. 465, 32 Am.St.Rep. 842; Railroad Co. v. Howard, 79 Ga. 44, 3 S.E. 426; Liston v. Reynolds, 69 Mont. 480, 223 P. 507, 509; Pauls Valley Compress & Storage Co. v. Harris, 62 Okl. 103, 162 P. 216, 218. Or it is that degree of care which may reasonably be expected from a person in the party's situation, that is, reasonable care. Neal v. Gillett, 1855, 23 Conn. 443.

Reasonable care is such a degree of care, precaution, or diligence as may fairly and properly be expected or required, having regard to the nature of the action, or of the subject-matter, and the circumstances surrounding the transaction. See Johnson v. Hudson River R. Co., 6 Duer, N.Y., 646; Appel v. Eaton & Price Co., 97 Mo.App. 428, 71 S.W. 741; Illinois Cent. R. Co. v. Noble, 142 Ill. 578, 32 N. E. 684. It is such care as an ordinarily prudent person would exercise under the conditions existing at the time he is called upon to act. Midland Valley R. Co. v. Bell, C.C.A.Okl., 242 F. 803, 808; Loverage v. Carmichael, 164 Minn. 76, 204 N.W. 921, 922. Substantially synonymous with ordinary or due care. Kucera v. Grigsby, 24 Ohio

App. 457, 156 N.E. 249, 250; Wiley v. Rutland R. Co., 86 Vt. 504, 86 A. 808, 811.

Great care is such as persons of ordinary prudence usually exercise about affairs of their own which are of great importance; or it is that degree of care usually bestowed upon the matter in hand by the most competent, prudent, and careful persons having to do with the particular subject. Railway Co. v. Smith, 87 Tex. 348, 28 S.W. 520; Telegraph Co. v. Cook, Cal., 61 F. 628, 9 C.C.A. 680.

A high degree of care is not the legal equivalent of reasonable care. Gallatty v. Central R. of New Jersey, 86 N.J.Law, 416, 92 A. 279, 280. It is that degree of care which a very cautious, careful, and prudent person would exercise under the same or similar circumstances. Bryning *v.* Missouri, K. & T. Ry. Co. of Texas, Tex.Civ.App., 167 S.W. 826, 827; a degree of care commensurate with the risk of danger. New Jersey Fidelity & Plate Glass Ins. Co. v. Lehigh Va:ley R. Co., 92 N.J.Law, 467, 105 A. 206, *207.*

Highest degree of care and utmost degree of care have substantially the same meaning. Brogan v. Union Traction Co., 76 W.Va. 698, 86 S.E. 753, 756. "Highest degree of care" only requires the care and skill exacted of persons engaged in the same or similar business. Birmingham Ry.., Light & Power Co. v. Cockrell, 10 Ala.App. 578, 65 So. 704. It means the highest degree required by law where human safety is at stake, and the highest degree known to the usage and practice of very careful, skillful, and diligent persons engaged in the same business by similar means or agencies. Birmingham Ry., Light & Power Co. v. Barrett, 179 Ala. 274, 60 So. 262, 264.

This division into three degrees of care, however, does not command universal assent. Raymond v. Portland R. Co., 100 Me. 529, 62 A. 602, 605, 3 L.R.A.,N.S., 94; Pornroy v. Bangor & Aroostook R. Co., 102 Me. 497, 67 A. 561, 562.

CARELESS. Synonymous with "negligent," the latter being probably the better word in pleadings. Delmore v. Kansas City Hardwood Flooring Co., 90 Kan. 29, 133 P. 151, 47 L.R.A.,N.S., 1220. Absence of ordinary or proper care, Pelfrey v. Commonwealth, 247 Ky. 484, 57 S.W.2d 474. Reckless, Stout v. Gallemore, 138 Kan. 385, 26 P.2d 573, 577.

CARELESSLY. Without care. Seago v. Paul Jones Realty Co., 185 Mo.App. 292, 170 S.W. 372, 373. Negligently; denoting the absence of ordinary care. Jones v. Commonwealth, 213 Ky. 356, 281 S.W. 164, 167.

CARENA. A term used in the old ecclesiastical law to denote a period of forty days.

CARENCE. In French law. Lack of assets; in*solvency.*

A *procês-verbal de carence* is a document setting out that the *huissier* attended to issue execution upon a judgment, but found nothing upon which to levy. Arg.Fr. Merc.Law, 547.

CARETA (spelled, also, *Carreta* and *Carecta).* A cart; a cart-load.

CARETORIUS, or CARECTARIUS. A carter. Blount.

CARGA. In Spanish law. An incumbrance; a charge. White, New Recop. b. 2, tit. 13, c. 2, § 2.

CARGAISON. In French commercial law. Cargo; lading.

CARGARE. In old English law. To charge. Spelman.

CARGO. In mercantile law. The load or lading of a vessel; the goods, merchandise, or whatever is conveyed in a ship or other merchant vessel. Seamans v. Loring, 21 Fed.Cas. 920; Thwing v. Insurance Co., 103 Mass. 401, 4 Am.Rep. 567.

While "cargo" is primarily the load of the ship, it may have a varying meaning. Pennsylvania Sugar Co. v. Czarnikow-Rionda Co., C.C.A.Pa., 245 F. 913, 915. The term may be applied in such a sense as to include passengers, as well as freight, but in a technical sense it designates goods only. Wolcott v. Eagle Ins. Co., 4 Pick., Mass., 429. Thus, we say, A cargo of emigrants. See 7 M. & G. 729, 744; Davison *v.* Von Lingen, 113 U.S. 49, 5 S.Ct. 346, 28 L.Ed. 885.

CARIAGIUM. In old English law. Carriage; the carrying of goods or other things for the king.

CARISTIA. Dearth, scarcity, dearness. Cowell.

CARK. In old English law. A quantity of wool, whereof thirty make a sarplar. (The latter is equal to 2,240 pounds in weight.) St. 27 Hen. VI. c. 2. Jacob.

CARLISLE TABLES. Life and annuity tables, compiled at Carlisle, England, about 1780. Used by actuaries, etc.

CARMACK ACT. An act of Congress, June 29, 1906, 49 U.S.C.A. § 20(11, 12), amending the •epburn Act. It supersedes all state regulations; Chicago, B. & Q. R. Co. v. Miller, 226 U.S. 513, 33 S.Ct. 155, 57 L.Ed. 323.

CARMEN. In the Roman law. Literally, a verse or song. A formula or form of words used on various occasions, as of divorce. Tayl.Civil Law, 349.

CARNAL. Pertaining to the body, its passions and its appetites; animal; fleshly; sensual; impure; sexual. People v. Battilana, 52 Cal.App.2d 685, 126 P.2d 923, 928.

CARNAL ABUSE. An act of debauchery of the female sexual organs by those of the male which does not amount to penetration;—the offense commonly called statutory rape consists of carnal abuse. State v. Huggins, 84 N.J.Law, 254, 87 A. 630, 633. An injury to the genital organs in an attempt at carnal knowledge, falling short of actual penetration. Snyder v. State, 92 Ohio St. 167, 110 N.E. 644, 645. • Carnal knowledge of a female child of tender age includes abuse. Dawkins v. State, 58 Ala. 376, 29 Am.Rep. 754.

CARNAL KNOWLEDGE. Coitus; copulation; the act of a man in having sexual bodily connection with a woman; sexual intercourse. State v. Normandale, 154 La. 523, 97 So. 798, 800; Patton v. State, 105 Tex.Cr.R. 128, 287 S.W. 51, 52. There is "carnal knowledge" if there is the slightest penetration of the sexual organ of the female by the sexual prgan of the male. It is not necessary that the vagina be entered or that the hymen be ruptured; the entering of the vulva or labia is sufficient. State v. Huggins, 84 N.J.Law, 254, 87 A. 630, 633.

CARNALITER. In old criminal law. Carnally. *Carnalitvr cognovit,* carnally knew. Technical words in indictments for rape, and held essential. 1 Hale, P.C. 637-639.

CARNALLY KNEW. In pleading. A technical phrase in an indictment to charge the defendant with the crime of rape. Some authorities suggest that the words "carnally knew" are included in the term "rapuit" and are therefore unnecessary; 2 Hawk.P.C. c. 25, § 56; 2 Stark.Cr.P1. 431, n. (e), at least in states in which the statutes do not designate the crime by the words "did ravish and carnally know"; 1 Hale, P.C. 628, 632; 3 Russell, Cr. (6th ed.) 230. See Noble v. State, 22 Ohio St. 545; Dawkins v. State, 58 Ala. 378, 29 Am.Rep. 754.

CARNO. In old English law. An immunity or privilege. Cowell.

CAROOME. In English law. A license by the lord mayor of London to keep a cart.

CARPEMEALS. Cloth made in the northern parts of England, of a coarse kind, mentioned in 7 Jac. I. c. 16. Jacob.

CARRERA. In Spanish law. A carriage-way; the right of a carriage-way. Las Partidas, pt. 3, tit. 31, 1. 3.

CARRIAGE. A vehicle used especially for the transportation of persons either for pleasure or business, and drawn by horses or other draught animals over the ordinary streets and highways of the country; not including cars used exclusively upon railroads or street railroads expressly constructed for the use of such cars. Snyder v. North Lawrence, 8 Kan. 84; Cream City R. Co. v. Chicago, etc., R. Co., 63 Wis. 93, 23 N.W. 425, 53 Am.Rep. 267.

The act of carrying, or a contract for transportation of persons or goods.

As used in exemption statutes, includes an automobile, Patten v. Sturgeon, C.C.A.Okl., 214 F. 65, 67, Hammond v. Pickett, Tex.Civ.App., 158 S.W. 174. 175, and it includes motor vehicles under various other circumstances. Ansell v. City of Boston, 254 Mass. 208, 150 N.E. 167, 168; State v. Jarvis, 89 Vt. 239, 95 A. 541, 543.

In admiralty, "carriage" includes ability to lift a cargo and hold it afloat, and does not necessarily involve any translation of the vessel from one place to another. The Jungshoved, D.C.N.Y., 272 F. 122, 124.

The business of carriage is that arising under contracts by which a person obligates himself, for an agreed price, to transport, or have transported, an object of some kind, to a designated place. Kocke v. Gamier, 15 La.App. 461, 131 So. 198, 199.

The contract of carriage is a contract for the conveyance of property, persons, or messages, from one place to another. Civ.Code Cal. § 2085; Comp.Laws N.D.1913, § 6185; Comp.Laws S.D.1929, § 1108.

As to "carriage by land or water" within the Illinois Workmen's Compensation Act, see Stevens v. Illinois Cent. R. Co., 306 Iii. 370, 137 N.E. 859, 861; Mattoon Clear Water Co. v. Industrial Commission, 291 Ill. 487, 126 N.E. 168, 169.

CARRICLE, or CARRACLE. A ship of great burden.

CARRIER. One undertaking to transport persons or property, Windham v. Pace, 192 S.E. 271, 6 S.E.2d 270, 274; or one employed in or engaged in the business of carrying goods for others for hire. Roeske v. Lamb, 39 N.M. 111, 41 P.2d 522, 523.

In common speech, "carriers" means transportation systems as distinguished from corporations owning or operating them. Virginian Ry. Co. v. Mullens, 271 U.S. 220, 46 S.Ct. 526, 529, 70 L.Ed. 915. And this is its meaning as used in the Federal Control Act, § 10. Missouri Pac. R. Co. v. Ault, 256 U.S. 554, 41 S.Ct. 593, 65 L.Ed. 1087; Birmingham Trust & Savings Co. v. Atlanta, B. & A. Ry. Co., D.C.Ga., 271 F. 731, 739 (Transportation Act). An electric railway that is part of the "general steam-railroad system" is a "carrier" subject to the Railway Labor Act, Sprague v. Woll, C.C.A.I11., 124 F.2d 767, 769.

A school bus acts as a "carrier." Leach v. School Dist. No. 322 of Thurston County, 197 Wash. 384, 85 P.2d 666, 667.

Carriers are either common or private. Standard Oil Co. v. Public Service Commission of Wisconsin, 217 Wis. 563, 259 N.W. 598.

Common carriers are those that hold themselves out or undertake to carry persons or goods of all persons indifferently, or of all who choose to employ it, Merchants Parcel Delivery v. Pennsylvania Public Utility Commission. 150 Pa.Super. 120, 28 A.2d 340, 344; Burnett v. Riter, Tex.Civ. App., 276 S.W. 347, 349; or those whose occupation or business is transportation of persons or things for hire or reward, In re Rodgers, Neb., 279 N.W. 800, 803, 804.

Common carriers of passengers are those that undertake to carry all persons indifferently who may apply for passage, so long as there is room, and there is no legal excuse for refusal. Lazor v. Banas, 114 Pa.Super. 425, 174 A. 817, 819; Anderson v. Fidelity & Casualty Co. of New York, 100 Misc. 411, 166 N.Y.S. 640, 642.

Private carriers are those who transport or undertake to transport in a particular instance for hire or reward. Allen v. Sackrider, 37 N.Y. 341; Columbus-Cincinnati Trucking Co. v. Public Utilities Commission, 141 Ohio St. 228, 47 N.E.2d 623; 625. 626.

For "Extension", see that title.

CARRIER'S LIEN. The right to hold the consignee's cargo until payment is made for the work of transporting it. Sommers Const. Co. v. Atlantic Coast Line R. Co., 62 Ga.App. 23, 7 S.E.2d 429, 431.

CARROTED FUR, Fur that has been treated by a solution of nitrate of mercury, so as to remove the water-repellant substance covering the fibers, making them more pliable and more easily to interlock with other fibers of fur, or of wool. Matteawan Mfg. Co. v. Emmons Bros. Co., C.C.A. Mass., 253 F. 372, 375.

CARRUCA. See Caruca.

CARRY. To bear, bear about, sustain, transport, remove, or convey. To have or bear upon or about one's person, as a watch or weapon;—locomotion not being essential. State v. Nieto, 101 Ohio St. 409, 130 N.E. 663, 665. Compare Heaton v. State, 130 Tenn. 163, 169 S.W. 750. As applied to insurance, means "possess" or "hold." San Francisco Realty Co. v. Linnard, 98 Cal.App. 33, 276 P. 368, 370.

CARRY A MEMBER. To pay the assessments against a sick or indigent member, as of a beneficial association, the payment being made by the other members or the local lodge or camp on his behalf. Bennett v. Sovereign Camp, Woodmen of the World, Tex.Civ.App., 168 S.W. 1023, 1026.

CARRY AN ELECTION. For a candidate to be elected, or a measure carried, at an election, he or it must receive a majority or a plurality of the legal votes cast. McKinney v. Barker, 180 Ky. 526, 203 S.W. 303, 304, L.R.A.1918E, 581.

CARRY ARMS OR WEAPONS. To wear, bear, or carry them upon the person or in the, clothing or in a pocket, for the purpose of use, or for the purpose of being armed and ready for offensive or defensive action in case of a conflict with another person. State v. Carter, 36 Tex. 89; State v. Murray, 39 Mo.App. 128.

CARRY COSTS. A verdict is said to carry costs when the party for whom the verdict is given becomes entitled to the payment of his costs as incident to such verdict.

CARRY ON TRADE OR BUSINESS. To conduct, prosecute or continue a particular avocation or business as a continuous operation or permanent occupation. The repetition of acts may be sufficient. Lichtenstein v. State, 34 Ga.App. 138, 128 S.E. 704; Ledgerwood v. Dashiell, Tex.Civ.App., 177 S.W. 1010, 1012; Martin v. Bankers' Trust Co., 18 Ariz. 55, 156 P. 87, 90, Ann.Cas.1918E, 1240; Territory v. Harris, 8 Mont. 140, 19 P. 286; Hutchings v. Burnet, 61 App.D.C. 109, 58 F.2d 514. To hold one's self out to others as engaged in the selling of goods or services. Helvering v. Highland, C.C.A.4, 124 F.2d 556, 561.

CARRY PASSENGERS FOR A CONSIDERATION. Transportation of persons under such conditions that operator owes them duty of carrier for hire. Cartos v. Hartford Accident & Indemnity Co., 160 Va. 505, 169 S.E. 594, 597.

CARRY STOCK. To provide funds or credit for its payment for the period agreed upon from the date of purchase. Saltus v. Genin, 16 N.Y.Super. Ct. 260. And see Pickering v. Demerritt, 100 Mass. 421.

CARRY THE IRON. See *Fire Ordeal* under the title Ordeal.

CARRYING AWAY. In criminal law. The act of removal or asportation, by which the crime of larceny is completed, and which is essential to constitute it. Gettinger v. State, 13 Neb. 308, 14 N.W. 403.

CART. In its ordinary and primary acceptation, a carriage with two wheels; yet it may mean a carriage in general, Favers v. Glass, 22 Ala. 624, 58 Am.Dec. 272; but not an automobile, Whitney v. Welnitz, 153 Minn. 162, 190 N.W. 57, 28 A.L.R. 68. The vehicle in which criminals are taken to execution.

CART BOTE. Wood or timber which a tenant is allowed by law to take from an estate, for the purpose of repairing instruments, (including necessary vehicles,) of husbandry. 2 Bl.Comm. 35. See Bote.

CARTA.

In old English law. A charter, or deed. Any written instrument.

In Spanish law. A letter; a deed; a power of attorney. Las Partidas, pt. 3, tit. 18, l. 30.

CARTA MERCATORIA. A grant (1303) to certain foreign merchants, in return for custom duties, of freedom to deal wholesale in all cities and towns of England, power to export their merchandise, and liberty to dwell where they pleased, together with other rights pertaining to speedy justice; 1 Holdsw.Hist.E.L. 311.

CARTE. In French marine law. A chart.

CARTE BLANCHE. A white sheet of paper; an instrument signed, but otherwise left blank. A. sheet given to an agent, with the principal's signature appended, to be filled up with any contract or engagement as the agent may see fit. Hence, metaphorically, unlimited authority.

CARTEL.

In Trade and Commerce

A combination of producers of any product joined together to control its production, sale, and price, and to obtain a monopoly in any particular industry or commodity. Also, an association by agreement of companies or sections of companies having common interests, designed to prevent extreme or unfair competition and allocate markets, and to promote the interchange of knowledge resulting from scientific and technical research, exchange of patent rights, and standardization of products. U. S. v. National Lead Co., D.C. N.Y., 63 F.Supp. 513.

State of War

An agreement between two hostile powers for the delivery of prisoners or deserters, or authorizing certain non-hostile intercourse between each other which would otherwise be prevented by the state of war; for example, agreements for intercommunication by post, telegraph, telephone, railway. II Op. 282.

Duel

A written challenge to a duel.

CARTULARY. A place where papers or records are kept.

In the plural: Ancient English records containing documents and legal proceedings—the muniments of title of the great landowners, and other miscellaneous documents. 2 Holdsw.Hist.E.L. 273. See 1 Poll. & Maid. p. xxii.

CARUCA, or CARUA. A plow. A four-wheeled carriage. A team for a plow, or four oxen abreast. See Carucata.

CARUCAGE. In old English law. A kind of tax or tribute anciently imposed upon every plow, *(carue* or plow-land,) for the public service. Spelman. The act of plowing.

CARUCATA, CARUCATE. A certain quantity of land used as the basis for taxation. A cartload. As much land as may be tilled by a single plow in a year and a day. Skene, *de verb, sig.* A plow land of one hundred acres. Ken. Gloss. The

quantity varies in different counties from sixty to one hundred and twenty acres. Whart. See Littleton, Ten. cclxii; 2 Holdsw.Hist.E.L. 56; Maitl. Domesday Book and Beyond 395; 1 L.J.R. 96. Also, a team of cattle, or a cart-load. See Bovata terra.

CARUCATARIUS. One who held lands in *carvage,* or plow-tenure. Cowell.

CARUE. A carve of land; plow-land. Britt. c. 84.

CARVAGE. The same as carucage, *(q.* v.) Cowell.

CARVE. In old English law. A carucate or plow-land.

CAS FORTUIT. Fr. In the law of insurance. A fortuitous event; an inevitable accident.

CASATA. In old English law. A house with land sufficient for the support of one family. Otherwise called *"hida,"* a hide of land, and by Bede, *"familia."* Spelman.

CASATUS. A vassal or feudal tenant possessing a *casata;* that is, having a house, household, and property of his own.

CASE.

Action, Cause, Suit, or Controversy

A general term for an action, cause, suit, or controversy, at law or in equity; a question contested before a court of justice; an aggregate of facts which furnishes occasion for the exercise of the jurisdiction of a court of justice. Quoted with approval in Kelly v. Roetzel, 64 Okl. 36, 165 P. 1150, 1153. See, also, Gebhard v. Sattler, 40 Iowa, 156; Martin v. Hunter, 1 Wheat. 352, 4 L.Ed. 97. A controversy that is litigated. City of Akron v. Roth, 88 Ohio St. 456, 103 N.E. 465, 467. A cause of action. Strother v. Union Pac. R. Co., D.C.Mo., 220 F. 731, 732; Colla v. Carmichael U-Drive Autos, 111 Cal.App. 378, 294 P. 378, 380.

The word "case" or "cause" means a judicial proceeding for the determination of a controversy between parties wherein rights are enforced or protected, or wrongs are prevented or redressed, Ex parte Chesser, 93 Fla. 590, 112 So. 87, 90; any proceeding judicial in its nature, McCarthy v. Clancy, 110 Conn. 482, 148 A. 551, 557.

*Case of actual controversy.* The phrase in Federal Declaratory Judgment Act connotes controversy of justiciable nature, excluding advisory decree on hypothetical facts. John P. Agnew & Co., Inc. v. Hoage, App.D.C., 69 App. D. C. 116, 99 F.2d 349, 351.

*Case sufficient to go to a jury.* A case that has proceeded upon sufficient proof to that stage where it must be submitted to jury and not decided against the state as a matter of law. State v. McDonough, 129 Conn. 483, 29 A.2d 582, 584.

*Cases and controversies.* This term, as used in the constitution of the United States, embraces claims or contentions of litigants brought before the court for adjudication by regular proceedings established for the protection or enforcement of rights, or the prevention, redress, or punishment of wrongs; and whenever the claim or contention of a party takes such a form that the judicial power is capable of acting upon it, it has become a case or controversy. Interstate Commerce Com'n v. Brimson, 154 U.S. 447, 14 Sup.Ct. 1125, 38 L.Ed. 1047. These two terms are to be distinguished; for there may be a "separable controversy" within a "case," which may be removed from a state court to *a* federal court, though the case as a whole is not removable. Snow v. Smith, C.C.Va., 88 Fed. 658. The term "controversies", if distinguishable frofn "cases", is so in that it is less comprehensive than the term "cases" and includes only suits of a civil nature, Smith v. Blackwell, C.C.A.S.C., 115 F.2d 186, 188.

Applications and Special Proceedings

The word "case" may include application for divorce, applications for the establishment of highways, applications for orders of support of relatives, and other special proceedings unknown to the common law. S. D. Warren Co. v. Fritz, 138 Me. 279, 25 A.2d 645, 648.

Box or Container

A box or container, as for cans or bottles filled with milk or other liquid goods. Ex parte Reineger, 184 Cal. 97, 193 P. 81, 83.

Event, Happening, etc.

In ordinary usage, the word "case" means "event," "happening," "situation," "circumstances." Highfield v. Delaware Trust Co., Del.Super., 188 A. 919, 922.

Form of Action

A form of action which lies to recover damages for injuries for which the more ancient forms of action will not lie. Steph.P1. 15. An abbreviated form of the title "trespass on the case," *q.* v. Munal v. Brown, C.C.Colo., 70 F. 968. See, also, Wadleigh v. Katandin Pulp & Paper Co., 116 Me. 107, 100 A. 150, 151. Action where injury is merely consequential. Mawson v. Vess Beverage Co., Mo.App., 173 S.W.2d 606, 612, 613.

Grand Jury Inquiry

As used in statute authorizing a challenge to an individual grand juror, any matter that might become subject of inquiry by grand jury. People v. Prior, 268 App.Div. 717, 54 N.Y.S.2d 150, 153.

Statement of Facts

A statement of the facts involved in a transaction or series of transactions, drawn up in writing in a technical form, for submission to a court or judge for decision or opinion. Under this meaning of the term are included a "case made" for a motion for new trial, a "case reserved" on the trial of a cause, an "agreed case" for decision without trial, etc.

*Case agreed on.* A formal written enumeration of the facts in a case, assented to by both parties *as* correct and complete, and submitted to the court by their agreement, in order that a decision may be rendered without a trial, upon the court's conclusions of law upon the facts as stated.

*Case for motion.* In English divorce and probate practice, when a party desires to make a motion, he must file, among other papers, a case for motion, containing an abstract of the proceedings in the suit or action, a statement of the circumstances on which the motion is founded, and the prayer or nature of the decree or order desired. Browne, Div. 251; Browne, Prob.Pr. 295.

Case-made. A statement of facts in relation to a disputed point of law, agreed to by both parties and submitted to the court without a preceding action. This is found only in the Code states. See De Armond v. Whitaker, 99 Ala. 252, 13 So. 613; A complete record of each successive ac-

tion *of* the trial court at the trial, including testimony. In re Opinion of the Judges, 29 Okl.Cr. 27, 232 P. 121, 122. A "case-made" consists of those things which transpired in court during the trial, and which are not a part of the record. Jones v. State, 9 Okl.Cr. 189, 130 P. 1178.

*Case on appeal.* In American practice. Before the argument in the appellate court of a case brought there for review, the appellant's counsel prepares a document or brief, bearing this name, for the information of the court, detailing the testimony and the proceedings below. In English practice. The "case on appeal" is a printed statement prepared by each of the parties to an appeal to the house of lords or the privy council, setting out methodically the facts which make up his case, with appropriate references to the evidence printed in the "appendix.' The term also denotes a written statement, prepared and transmitted by an inferior court or judge raising a question of law for the opinion of a superior court.

*Case reserved.* A statement in writing of the facts proved on the trial of a cause, drawn up and settled by the attorneys and counsel for the respective parties under the supervision of the judge, for the purpose of having certain points of law, which arose at the trial and could not then be satisfactorily decided, determined upon full argument before the court in *Banc.* This is otherwise called a "special case ;" and it is usual for the parties, where the law of the case is doubtful, to agree that the jury shall find a general verdict for the plaintiff, subject to the opinion of the court upon such a case to be made, instead of obtaining from the jury a special verdict. 3 Bl.Comm. 378; 3 Steph.Comm. 621; Steph.Pl. 92, 93; 1 Burrill, Pr. 242, 463.

*Case stated.* In practice. An agreement in writing, between a plaintiff and defendant, that the facts in dispute between them are as therein agreed upon and set forth. 3 Sharsw.Bla.Comm. 453, n. ; 6 Term, 313. A case agreed upon. A statement of all the facts of a case, with the names of the witnesses, and a detail of the documents which are to support them. A statement of agreed facts. Caissie v. City of Cambridge, 317 Mass. 346, 58 N.E.2d 169. An auditor's report. Hanifin v. C. & R. Const. Co., 313 Mass. 651, 48 N.E.2d 913, 918. A brief. As to the distinction between submission on a case stated and a submission merely on agreed facts, see Frati v. Jannini, 226 Mass. 430, 115 N.E. 746_747.

Case to move for new trial. In practice. A case prepared by the party against whom a verdict has been given, upon which to move the court to set aside the verdict and grant *a* new trial.

### Supplementary Proceedings

The word "cases" in section providing that "act shall apply in all cases now pending or hereafter instituted in which the final decree of divorce was recorded prior to the effective date of this act", is synonym of "supplementary proceedings". Chiapetta v. Jordan, 16 So.2d 641, 644, 153 Fla. 788.

CASE LAW. The aggregate of reported cases as forming a body of jurisprudence, or the law of a particular subject as evidenced or formed by the adjudged cases, in distinction to statutes and other sources of law.

CASE SYSTEM. A method of teaching or studying the science of the law by a study of the cases historically, or by the inductive method. It was introduced in the Law School of Harvard University in 1869-70 by Christopher C. Langdell, Dane Professor of Law.

CASEMENT. A window sash opening on hinges affixed to the upright side of the frame, and includes wooden as well as steel construction. Johnson Metal Products Co. v. Lundell-Eckberg Mfg. Co., D.C.N.Y., 18 F.Supp. 572, 574.

CASH. Money or its equivalent; usually ready money. Kerlin v. Young, 159 Ga. 95, 125 S.E. 204, 207; Britain v. Rice, Tex.Civ.App., 204 S.W. 254, 256.

Money in hand, either in current coin or other legal tender, or in bank bills or checks paid and received as money. Dunlap v. Whitmer, 133 La. 317, 62 So. 938, 943, Ann.Cas. 1915C, 990. Bank deposits, In re Feist's Will, 170 Misc. 497, 10 N.Y.S.2d 506, 508; Lane v. Railey, 280 Ky. 319, 133 S.W.2d 74, 79, 80. Bank notes or sight drafts, Lane v. Railey, 280 Ky. 319, 133 S.W.2d 74, 79, 80. Bank's deposit certificate. Bingham v. Montcalm County, 251 Mich. 651, 232 N.W. 348, check, Van Decar v. Streeter, 136 Misc. 206, 240 N.Y.S. 492, 497. Commercial paper. Commercial Credit Corporation v. Third & Lafayette Streets Garage, 131 Misc. 786, 228 N.Y.S. 166, 168. Currency, coin, specie. Lane v. Railey, 280 Ky. 319, 133 S.W.2d 74, 79, 80. Whatever can be used as money without being converted *into* another form. That which circulates as money, including bank bills. Hooper v. Flood, 54 Cal. 221; Dazel v. Landry, 21 Nev. 291, 30 Pac. 1064; United States v. Williams, D.C. Wash., 282 F. 324, 325. The term may include currency, municipal orders, warrants, or scrip. Arkansas Public Utilities Co. *v.* Incorporated Town of Heber Springs, 151 Ark. 249, 235 S.W. 999, 1001. It is frequently used as an antonym of "credit." Parrish v. American Ry. Employees' Pub. Corporation, 83 Cal.App. 298, 256 P. 590, 591; State v. Woodward, 208 Ala. 31, 93 So. 826.

CASH ACCOUNT. A record, in bookkeeping, of all cash transactions; an account of moneys received and expended.

CASH BOOK. In bookkeeping, an account book in which is kept a record of all cash transactions, or all cash received and expended.

The object of the cash book is to afford a constant facility to ascertain the true state of a man's cash. Pardessus, n. 87.

CASH CONTRACT. A "cash contract," as of a municipal corporation, is one not creating a debt within the constitution. Jeffersonville v. Cotton State Belting Supply Co., 30 Ga.App. 470, 118 S. E. 442.

CASH DISCOUNT. A deduction from billed price which seller allows for payment within a certain time. Leonard v. U. S., Ct.C1., 7 F.Supp. 295, 297.

CASH MARKET VALUE. "Fair market value", "reasonable market value" or "fair cash market value" as synonymous. Housing Authority of Birmingham Dist. v. Title , Guarantee Loan & Trust Co., 243 Ala. 157, 8 So.2d 835, 837. For "Fair Cash Market Value," see that title.

CASH NOTE. In England. A bank-note of a provincial bank or of the Bank of England.

CASH PRICE. A price payable in cash at the time of sale of property, in opposition to a barter or a sale on credit.

CASH SALE. A sale for money in hand. Steward v. Scudder, 24 N.J.Law, 101; Bass v. Green & Yates, 201 Ala. 515, 78 So. 869. A sale conditioned on payment concurrent with delivery. Weyerhaeuser Timber Co. v. First Nat. Bank, 150 Or. 172, 43 P.2d 1078, 1081. See, further, Sale.

CASH SURRENDER VALUE. The "cash surrender value" of a life policy is the reserve less a

surrender charge. Guggenheim v. Rasquin, U.S. N.Y., 312 U.S. 254, 61 S.Ct. 507, 508, 85 L.Ed. 813.

CASH VALUE. The cash value of an article or piece of property is the price which it would bring at private sale (as distinguished from a forced or auction sale) the terms of sale requiring the payment of the whole price in ready money, with no deferred payments. Tax Com'rs v. Holliday, 150 Ind. 216, 49 N.E. 14, 42 L.R.A. 826; Cummings v. Bank, 101 U.S. 162, 25 L.Ed. 903. For "Fair Cash Value," see that title.

Actual value or market value, Fort Worth & D. N. Ry. Co. v. Sugg, Tex.Civ.App., 68 S.W.2d 570, 572; Yeoman Mut. Life Ins. Co. v. State Board of Assessment, 229 Iowa 220, 294 N.W. 330, 334. Clear market value or fair market value. In re Ryerson's Estate, 239 Wis. 120, 300 N.W. 782, 784. Price property will bring on sale by one desiring, but not compelled, to sell to one desiring, but not compelled, to purchase. Insurance Co. of North America v. McGraw, 255 Ky. 839, 75 S.W.2d 518, 520. Saleable value, In re Lang Body Co., C.C. A.Ohio, 92 F.2d 338, 340. Usual selling price at private sale and not at a forced or auction sale. Volunteer State Life Ins. Co. v. Union Title Guarantee Co., 175 La. 183, 143 So. 43, value at which property would be taken in payment of just debt from solvent debtor. Bank of Fairfield v. Spokane County, 173 Wash. 145, 22 P.2d 646, 652.

CASHIER, v. In military law. To deprive a military officer of his rank and office.

CASHIER, n. An officer of a moneyed institution, or commercial house, or bank, who is intrusted with, and whose duty it is to take care of, the cash or money of such institution or bank. A custodian of the money of a bank, mercantile house, and the like. Miller v. State, 88 Tex.Cr. R. 69, 225 S.W. 379, 381, 12 A.L.R. 597.

The cashier of a bank is its chief executive officer. Pem-Iscot County Bank v. Central-State Nat. Bank, 132 Tenn. 152, 177 S.W. 74, 75; Bank of Commerce of Chanute v. Sams, 96 Kan. 437, 152 P. 28, 29. He is its chief financial agent, through whom its principal financial dealings are conducted; Brown v. Mt. Holly Nat. Bank, 288 Pa. 478, 136 A. 773, 775; and is peculiarly that agency authorized to make loans and collections, whose special duty it is to give direction to and further the stockholders' interests; People's Bank of Calhoun v. Harry L. Winter, Inc., 161 Ga. 898, 132 S.E. 422, 424.

He receives and pays out its moneys, collects and pays its debts, and receives and transfers its commercial securities. Tellers and other subordinate officers may be appointed, but they are under his direction, and are, as it were, the arms by which designated portions of his various functions are discharged. Merchants' Nat. Bank v. State Nat. Bank, 10 Wall. 650, 19 L.Ed. 1008.

CASHIERED. Dismissal with ignominy or dishonor, or in disgrace. Metropolis Co. v. Croasdell, 145 Fla. 455, 199 So. 568, 569.

CASHIER'S CHECK. See Check.

CASHLITE. An amercement or fine; a mulct.

CASING—HEAD GAS. Natural gas from an oil well, saturated with oil vapors or gasoline. 58 C.J.S. p. 26.

—Casing-head gasoline. Sometimes called natural gasoline. It is produced from casing-head gas by compression or separation of the gases which come from oil wells. 58 C.J.S. p. 21.

CASKET. In one sense, a coffin. Ware v. State, 31 Ga.App. 554, 121 S.E. 251.

CASSARE. To quash; to render void; to break. Du Cange.

CASSATION. In French law. Annulling; reversal; breaking the force and validity of a judgment. A decision emanating from the sovereign authority, by which a decree or judgment in the court of last resort is broken or annulled. Merl. Repert.

CASSATION, COURT OF. (Fr. *tour de cassation.)* The highest court in France; so termed from possessing the power to quash *(casser)* the decrees of inferior courts. It is a court of appeal in criminal as well as civil cases.

CASSETUR BILLA. (Lat. That the bill be quashed.) In practice. The form of the judgment for the defendant on a plea in abatement, where the action was commenced by bill, *(billa.)* 3 Bl.Comm. 303; Steph.Pl. 128, 131. The form of an entry made by a plaintiff on the record, after a plea in abatement, where he found that the plea could not be confessed and avoided, nor traversed, nor demurred to; amounting in fact to a discontinuance of the action. 2 Archb.Pr.K.B. 3, 236; 1 Tidd, Pr. 683.

CASSETUR BREVE. (Lat. That the writ be quashed.) In practice. The form of the judgment for the defendant on a plea in abatement, where the action was commenced by original writ (breve). 3 Bl.Comm. 303; Steph.Pl. 107, 109.

A judgment sometimes entered against a plaintiff at his request when, in consequence of allegations of the defendant, he can no longer prosecute his suit with effect. 5 Term 634.

CASSOCK, or CASSULA. A garment worn by a priest.

CAST, v. In old English practice. To allege, offer, or present; to proffer by way of excuse (as to "cast an essoin").

This word is now used as a popular, rather than a technical, term, in the sense of to overcome, overthrow, or defeat in a civil action at law. It also means to deposit formally or officially. Maddox v. Board of State Canvassers, Mont., 149 P.2d 112, 115; Port of Palm Beach Dist. v. State, 156 Fla. 99, 22 So.2d 581, 582. It is also used in connection with the imposition upon a party litigant of costs in the suit: as, A. is "cast" for the costs of the case.

CAST AWAY. To cast away a ship is to do such an act upon or in regard to it as causes it to perish or be lost, so as to be irrecoverable by ordinary means. The term is synonymous with "destroy," which means to unfit a vessel for service beyond the hope of recovery by ordinary means. U. S. v. Vanranst, 28 Fed.Cas. 360.

CASTEL, or CASTLE. A fortress in a town; the principal mansion of a nobleman. 3 Inst. 31.

CASTELLAIN. In old English law. The lord, owner, or captain of a castle; the constable of a fortified house; a person having the custody of one of the crown mansions; an officer of the forest.

CASTELLANUS. A castellain; the keeper or constable of a castle. Spelman.

CASTELLARIUM, CASTELLATUS. In old English law. The precinct or jurisdiction of a castle. Blount.

CASTELLORUM OPERATIO. In Saxon and old English law. Castle work. Service and labor done by inferior tenants for the building and upholding of castles and public places of defense. One of the three necessary charges, *(trinoda necessitas,)* to which all lands among the Saxons were expressly subject. Cowell. Towards this some gave their personal service, and others, a contribution of money or goods. 1 Bla.Comm. 263.

CASTIGATORY. An engine used to punish women who have been convicted of being common scolds. It is sometimes called the trebucket, tumbrel, ducking-stool, or cucking-stool. U. S. v. Royall, 27 Fed.Cas. 907.

CASTING VOTE. Where the votes of a deliberative assembly or legislative body are equally divided on any question or motion, it is the privilege of the presiding officer to cast one vote (if otherwise he would not be entitled to any vote) on either side, or to cast one additional vote, if he has already voted as a member of the body. This is called the "casting vote." Brown v. Foster, 88 Me. 49, 33 A. 662, 31 L.R.A. 116.

CASTLEGUARD. In feudal law. An imposition anciently laid upon such persons as lived within a certain distance of any castle, towards the maintenance of such as watched and warded the castle.

CASTLEGUARD RENTS. In old English law. Rents paid by those that dwelt within the precincts of a castle, towards the maintenance of such as watched and warded it.

CASTRENSIS. In the Roman law. Relating to the camp or military service.

*Castrense peculium,* a portion of property which a son acquired in war, or from his connection with the camp. Dig. 49, 17.

CASTRUM. Lat.

In Roman law. A camp.

In old English law. A castle. Bract. fol. 69b. A castle, including a manor. 4 Coke, 88.

CASU CONSIMILI. In old English law. A writ of entry, granted where tenant by the curtesy, or tenant for life, alienated in fee, or in tail, or for another's life, which was brought by him in reversion against the party to whom such tenant so alienated to his prejudice, and in the tenant's lifetime. Termes de la Ley. See Consimili C.asu.

CASU PROVISO. Lat. In the case provided for. A writ of entry framed under the provisions of the statute of Gloucester (6 Edw. I.) c. 7, which lay for the benefit of the reversioner when a tenant in dower aliened in fee or for life.

CASUAL. Accidental, Gray v. Greenwood, 32 A. 2d 347, 350, 21 N.J.Misc. 137; Texas & N. 0. R. Co. v. Owens, Tex.Civ.App., 54 S.W.2d 848, 853; Sonnenberg v. Berg's Market, 227 Mo.App. 391, 55 S.W.2d 494; by chance, Texas & N. 0. R. Co. v. Owens, Tex.Civ.App., 54 S.W.2d 848, 853; coming by chance, Lawrenz v. Langford Electric Co., 206 Minn. 315, 288 N.W. 727, 731; Norris v. Koenig, Mo.App., 183 S.W.2d -160, 162; fortuitous, Sonnenberg v. Berg's Market, 227 Mo.App. 391, 55 S.W.2d 494, 495. Happening or coming to pass without design and without being foreseen or expected. Root v. Topeka Ry. Co., 96 Kan. 694, 153 P. 550; Ranson-Rooney Co. v. Overseas Ry., f7 La.App. 205, 134 So. 765, 768; impermanent, Board of Sup'rs of Amherst County v. Boaz, 176 Va. 126, 10 S.E.2d 498, 500; incidental, Mason v. Wampler, 89 Ind.App. 483, 166 N.E. 885, 886, Coffin v. Hook, Ind.App., 45 N.E.2d 369, 372; indeterminate, Texas & N. 0. R. Co. v. Owens, Tex.Civ.App., 54 S.W.2d 848, 853; irregular, Gardner v. Trustees of Main St. M. E. Church of Ottumwa, 217 Iowa, 1390, 250 N.W. 740; liable to happen, subject to chance or accident, Coffin v. Hook, 112 Ind.App. 549, 45 N.E. 2d 369, 372; occasional, Cardillo v. Mockabee, 70 App.D.C. 16, 102 F.2d 620, 622; uncertain, Coffin v. Hook, 112 Ind.App. 549, 45 N.E.2d 369, 372; unexpected, Gray v. Greenwood, 21 N.J.Misc. 137, 32 A.2d 347, 350; Texas & N. 0. R. Co. v. Owens, Tex.Civ.App., 54 S.W.2d 848, 853; unforeseen, Texas & N. 0. R. Co. v. Owens, Tex.Civ.App., 54 S.W. 2d 848, 853; Lawrenz v. Langford Electric Co., 206 Minn. 315, 288 N.W. 727, 731; unpremeditated, Lawrenz v. Langford Electric Co., 206 Minn. 315, 288 N.W. 727, 731; without regularity, Norris v. Koenig, Mo.App., 183 S.W.2d 160, 162; Sonnenberg v. Berg's Market, 227 Mo.App. 391, 55 S.W.2d 494.

CASUAL BETTOR. An occasional and irregular bettor who is not guilty of crime of engaging in betting and gambling organized and carried on as a systematic business. Bamman v. Erickson, 288 N.Y. 133, 41 N.E.2d 920, 922.

CASUAL DEFICENCY OF REVENUE. An unforeseen or unexpected deficiency, or an insufficiency of funds to meet some unforeseen and necessary expense. Atlanta Distributing Terminals v. Board of Com'rs etc., of Fulton County, 177 Ga. 250, 170 S.E. 52, 56.

CASUAL DEFICIT. A deficit happening by chance or accident and without design. State Budget Commission v. Lebus, 244 Ky. 700, 51 S.W.2d 965.

CASUAL EJECTOR. In practice. The nominal defendant in an action of ejectment. French v. Robb, 67 N.J.Law, 260, 51 A. 509, 57 L.R.A. 956.

CASUAL EMPLOYEE. Though courts have refrained from defining "casual employee" as such

term is used in the Workmen's Compensation Act, the test in the particular case is whether service rendered or work done, rather than contract of hiring, is of casual nature; infrequency of employment or its duration being immaterial. Hygeia Ice & Coal Co. v. Schaeffer, 152 Md. 231, 136 A. 548, 551.

As regards whether an employee is a "casual" employee the word "casual" means something happening without design and unexpectedly. Ward v. Ocean Forest Club, 188 S.C. 233, 198 S.E. 385.

CASUAL EMPLOYMENT. Employment at uncertain times or irregular intervals. Johnson v. Wisconsin Lumber & Supply Co., 203 Wis. 304, 234 N.W. 506, 507, 72 A.L.R. 1279; employment by chance, fortuitously, and for no fixed time, Boyd v. Philmont Country Club, 129 Pa.Super. 135, 195 A. 156, 157, 158; employment casual and not in usual course of trade, business, occupation or profession of employer. Kunkler v. Mauck, 108 Ind.App. 98, 27 N.E.2d 97, 99. Employment for short time and limited and temporary purpose, Moore v. Clarke, 171 Md. 39, 187 A. 887, 894, 107 A.L.R. 924; fortuitous and irregular employment. McCabe v. Timothy Shanahan & Son, 147 Pa.Super. 491, 24 A.2d 16, 18; occasional, irregular or,incidental employment, Maguire v. Valley Forge Military Academy, 116 Pa.Super. 495, 176 A. 865, 867.

The test is the nature of the work or an analysis of the contract of employment. State Farm Mut. Automobile Ins. Co. v. Brooks, D.C.Mo., 43 F.Supp. 870, 872; or whether the employment is necessary to carry out the employer's business in usual way. Thompson v. G. Correale & Sons, 130 N.J.L. 431, 33 A.2d 578, 579; or the scope of the contract of employment or the continuity of employment. Cochrane v. William Penn Hotel, Hartford Accident & Indemnity Co., Intervener, 140 Pa.Super. 323, 13 A.2d 875, 877; "Casual" means occasional; incidental; happening at uncertain times; not stated or regular; its antonyms being regular; systematic; periodic; certain, Pooler's Case, 122 Me. 11, 118 A. 590, 591; Dial v. Coleman's Lunch, 217 Iowa, 945, 251 N.W. 33; happening or coming to pass without design and without being foreseen or expected, accidental, fortuitous, coming by chance, coming without regularity, Tokash v. General Baking Co., 349 Mo. 767, 163 S.W.2d 554, 556; The term refers to nature of employment and not to length. Parks v. E. M. Carmell Co., 168 Tenn. 385, 79 S.W.2d 285, 287.

CASUAL EVIDENCE. A phrase used to denote all such evidence as happens to be adducible of a fact or event, but which was not prescribed by statute or otherwise arranged beforehand to be the evidence of the fact or event. Brown.

CASUAL PAUPER. A poor person who, in 'England, applies for relief in a parish other than that of his settlement. The ward in the work-house to which they are admitted is called the "casual ward."

CASUAL POOR. In English law. Those who are not settled in a parish. Such poor persons as are suddenly taken sick, or meet with some accident, when away from home, and who are thus providentially thrown upon the charities of those among whom they happen to be. Force v. Haines, 17 N.J.Law, 405.

CASUALTY. Accident; event due to sudden, unexpected or unusual cause; event not to be foreseen or guarded against; inevitable accident; misfortune or mishap; that which comes by chance or without design. A loss from such an event or cause; as by fire, shipwreck, lightning, etc. Story, Bailm. § 240; Gill v. Fugate, 117 Ky. 257, 78 S.W. 191; Farmers Co-op. Soc. No. 1 of Quanah v. Maryland Casualty Co., Tex.Civ.App., 135 S.W.2d 1033, 1036; Matheson v. Commissioner of Internal Revenue, C.C.A., 54 F.2d 537, 539; Stieffen v. Darling, 158 Va. 375, *163* S.E. 353, 354.

Chance; accident; contingency; also that which comes without design or without being foreseen. Bennett v. Howard, 175 Ky. 797, 195 S.W. 117,. 118, L.R.A.1917E, 1075; United States v. Rogers, C.C.A. Cal., 120 F.2d 244, 246.

-Casualties of superiority. In Scotch law. Payments from an inferior to a superior, that is, from a tenant to his lord, which arise upon uncertain events, as opposed to the payment of rent at fixed and stated times. Bell.

-Casualties of wards. In Scotch law. The mails and duties due to the superior in wardholdings.

CASUS. Lat. Chance; accident; an event; a case; a case contemplated.

CASUS BELLI. An occurrence giving rise to or justifying war.

CASUS FEDERIS. In international law. The case of the treaty. The particular event or situation contemplated by the treaty, or stipulated for, or which comes within its terms. Grotius, b. 2, c. 25; Vattel, b. 2, c. 12, § 168; 1 Kent, 49. In commercial law. The case or event contemplated by the parties to an individual contract or stipulated for by it, or coming within its terms.

CASUS FORTUITUS. An inevitable accident, a chance occurrence, or fortuitous event. A loss happening in spite of all human effort and sagacity. 3 Kent, Comm. 217, 300; The Majestic, 166 U.S. 375, 17 S.Ct. 597, 41 L.Ed. 1039.

CASUS FORTUITUS NON EST SPERANDUS, ET NEMO TENETUR DEVINARE. A fortuitous event is not to be expected, and no one is bound to foresee it. 4 Coke, 66.

CASUS FORTUITUS NON EST SUPPONENDUS. A fortuitous event is not to be presumed. Hardr. 82, arg.

CASUS MAJOR. In the civil law. A casualty; an extraordinary casualty, as fire, shipwreck, etc. Dig. 44, 7, 1, 4.

CASUS OMISSUS. A case omitted; an event or contingency for which no provision is made; particularly a case not provided for by the statute

on the general subject, and which is therefore left to be governed by the common law. .5 Co. 38; 11 East 1; Broom, Max. 46.

CASUS OMISSUS ET OBLIVION! DATUS DISPOSITION! JURIS COMMUNIS RELINQUITUR. A case omitted and given to oblivion (forgotten) is left to the disposal of the common law. 5 Coke, 38. A particular case, left unprovided for by statute, must be disposed of according to the law as it existed prior to such statute. Broom, Max. 46; 1 Exch. 476.

CASUS OMISSUS PRO OMISSO HABENDUS EST. A case omitted is to be held as (intentionally) omitted. Tray.Lat.Max. 67.

CAT. A domestic animal that catches mice; a well known domesticated carnivorous mammal kept to kill mice and rats and as a house pet. Thurston v. Carter, 112 Me. 361, 92 A. 295, L.R.A. 1915C, 359.

An instrument with which criminals are flogged. It consists of nine lashes of whipcord, tied to a wooden handle, and is frequently called cat-o-nine-tails. It is used where the whipping-post is retained as a mode of punishment and was formerly resorted to in the navy.

CATALLA. In old English law. Chattels. The word among the Normans primarily signified only beasts of husbandry, or, as they are still called, "cattle," but, in a secondary sense, the term was applied to all movables in general, and not only to these, but to whatever was not a fief or feud. Wharton.

CATALLA JUSTE POSSESSA AMITTI NON POSSUNT. Chattels justly possessed cannot be lost. Jenk.Cent. 28.

CATALLA OTIOSA. Dead goods or chattels, as distinguished from animals. Idle cattle, that is, such as were not used for working, as distinguished from beasts of the plow; called also *animalia otiosa*. Bract. fols. 217, 217b; 3 Bl.Comm. 9.

CATALLA REPUTANTUR INTER MINIMA IN LEGE. Chattels are considered in law among the least (or minor) things. Jenk.Cent. 52.

CATALLIS CAPTIS NOMINE DISTRICTIONIS. An obsolete writ that lay where a house was within a borough, for rent issuing out of the same, and which warranted the taking of doors, windows, etc., by way of distress.

CATALLIS REDDENDIS. For the return of the chattels; an obsolete writ that lay where goods delivered to a man to keep till a certain day were not upon demand redelivered at the day. Reg. Orig. 39.

CATALLUM. A chattel. Most frequently used in the plural form, *catalla (q. v.)*. Cowell; Du Cange.

CATALS. Goods and chattels. See Catalla.

CATANEUS. A tenant *in capite*. A tenant holding immediately of the crown. Spelman.

CATASCOPUS. An old name for an archdeacon.

CATASTROPHE. A notable disaster; a more serious calamity than might ordinarily be understood from the term "casualty." Reynolds v. Board of Com'rs of Orleans Levee Dist., 139 La. 518, 71 So. 787, 791.

CATCH TIME CHARTER. One under which compensation is paid for the time the boat is actually used. Schoonmaker-Conners Co. v. New York Cent. R. Co., D.C.N.Y., 12 F.2d 314, 315.

CATCHING BARGAIN. See Bargain.

CATCHINGS. Things caught, and in the possession, custody, power, and dominion of the party, with a present capacity to use them for his own purposes. The term includes blubber, or pieces of whale flesh cut from the whale, and stowed on or under the deck of a ship. A policy of insurance upon outfits, and catchings substituted for the outfits, in a whaling voyage, protects the blubber. Rogers v. Insurance Co., 1 Story, 603; Fed.Cas.No. 12,016; 4 Law Rep. 297.

CATCHLAND. Land in Norfolk, so called because it is not known to what parish it belongs, and the minister who first seizes the tithes of it, by right of preoccupation, enjoys them for that year. Cowell.

CATCHPOLL. A name formerly given to a sheriff's deputy, or to a constable, or other officer whose duty it is to arrest persons. He was a sort of serjeant. The word is not now in use as an official designation. Minshew.

CATER COUSIN. (From Fr. *Quatrecousin.)* A cousin in the fourth degree; hence any distant or remote relative. Bla.Law Tracts 6.

CATHEDRAL. In English ecclesiastical law. A tract set apart for the service of the church. The church of the bishop of the diocese, in which is his *cathedra,* or throne, and his special jurisdiction; in that respect the principal church of the diocese.

CATHEDRAL PREFERMENTS. In English ecclesiastical law. All deaneries, archdeaconries, and canonries, and generally all dignities and offices in any cathedral or collegiate church, below the rank of a bishop.

CATHEDRATIC. In English ecclesiastical law. A sum of 2s. paid to the bishop by the inferior clergy; but from its being usually paid at the bishop's *synod,* or visitation, it is commonly named *synodals*. Wharton.

CATHOLIC CREDITOR. In Scotch law. A creditor whose debt is secured on all or several distinct parts of the debtor's property. Bell.

CATHOLIC EMANCIPATION ACT. The statute of 10 Geo. IV, *c.* 7, by which Roman Catholics were restored, in general, to the full enjoyment of all civil rights, except that of holding ecclesiastical offices, and certain high appointments in, the state. 3 Steph.Comm. 109.

CATONIANA REGULA. In Roman law. The rule which is commonly expressed in the maxim, *Quod ab initio non valet tractu temporis non convalebit,* meaning that what is at the beginning void by reason of some technical (or other) legal defect will not become valid merely by length of time. The rule applied to the institution of *hceredes,* the bequest of legacies, and such like. The rule is not without its application also in English law; *e. g.,* a married woman's will (being void when made) is not made valid merely because she lives to become a widow. Brown.

CATTLE. A generic term for domestic quadrupeds; animals used by man for labor or food. In its primary sense, it embraces horses, mares, geldings, foals, or fillies, asses, and mules, as well as animals of the ox kind or bovine species. Bell v. Erie R. Co., 183 App.Div. 608, 171 N.Y.S. 341, 343. The term may also include goats, swine, and sheep. Ash Sheep Co. v. U. S., 252 U.S. 159, 40 S.Ct. 241, 243, 64 L.Ed. 507. Calves running with their mothers are cattle. Peterson v. Citizens' Bank of Stuart, 117 Neb. 327, 220 N.W. 575, 577.

In the narrower, popular sense, animals of the bovine genus. State v. Eaglin, 148 La. 75, 86 So. 658, 659; Gragg v. State, 112 Neb. 732, 201 N.W. 338, 340. This is the sense in which the term is generally used in the western United States, and it is said further that it is not generally, but may be, taken to mean calves, or animals younger than yearlings. State v. District Court of Fifth Judicial Dist. in and for Nye County, 42 Nev. 218, 174 P. 1023, 1025.

CATTLE GATE. In English law. A customary proportionate right of pasture enjoyed in common with others. 34 E. L. & Eq. 511; 1 Term 137. A right to pasture cattle in the land of another. It is a distinct and several interest in the land, passing by lease and release. 13 East, 159; 5 Taunt. 811.

CATTLEGUARD. A device to prevent cattle from straying along a railroad-track at a highway-crossing. Heskett v. Railway Co., 61 Iowa, 467, 16 N.W. 525; True v. Maine Cent. R. Co., 113 Me. 375, 94 A. 183, 184.

CATTLE PASS. As used in a statute, a narrow passage way under a railroad track high and wide enough to admit the passage of a cow, horse, or ox to and from a pasture. True v. Maine Cent. R. Co., 113 Me. 375, 94 A. 183, 184.

CATTLE RANGE. Under a statute, a range the usual and customary use of which has been for cattle. State v. Butterfield, 30 Idaho 415, 165 P. 218, 219.

CATTLE RUSTLING. Stealing of bovine cattle, Galeppi v. C. Swanston & Son, 107 Cal.App. 30, 290 P. 116, 119.

CAUCASIAN. Pertaining to the white race, to which belong the greater part of European nations and those of western Asia. Rice v. Gong Lum, 139 Miss. 760, 104 So. 105, 110. The term is inapplicable to denote families or stocks inhabiting Europe, and speaking either the so-called Aryan or Semitic languages. Ex parte Shahid, D.C.S.C., 205 F. 812, 814.

CAUCUS. A meeting of the legal voters of any political party assembled for the purpose of choosing delegates or for the nomination of candidates for office.

CAUDA TERR2E. A land's end, or the bottom of a ridge in arable land. Cowell.

CAULCEIS. Highroads or ways pitched with flint or other stones.

CAUPO. In the civil law. An innkeeper. Dig. 4, 9, 4, 5.

CAUPONA. In the civil law. An inn or tavern. Inst. 4, 5, 3.

CAUPONES. In the civil law. Innkeepers. Dig. 4, 9; Id. 47, 5; Story, Ag. § 458.

CAURSINES. Italian merchants who came into England in the reign of Henry III., where they established themselves as money lenders, but were soon expelled for their usury and extortion. Cowell; Blount.

CAUSA.

In General

Lat. A cause, reason, occasion, motive, or inducement.

As Preposition

Used with the force of a preposition, it means by virtue of, on account of. Also with reference to, in contemplation of. *Causa mortis,* in anticipation of death.

Condition, etc.

A condition; a consideration; motive for performing a juristic act. Used of contracts, and found in this sense in the Scotch law also. Bell.

In the Civil Law and in Old English Law

The word signified a source, ground, or mode of acquiring property; hence a title; one's title to property. Thus, *"titulus est justa causa possidendi id quod nostrum est;"* title is the lawful ground of possessing that which is ours. 8 Coke, 153. See Mackeld.Rom.Law, §§ 242, 283.

In Old English Law

A cause; a suit or action pending. *Causa testamentaria,* a testamentary cause. *Causa matrimonialis,* a matrimonial cause. Bract. fol. 61.

In Old European Law

Any movable thing or article of property.

See "Cause."

CAUSA CAUSE EST CAUSA CAUSATI. The cause of a cause is the cause of the thing caused. 12 Mod. 639. The cause of the cause is to be considered as the cause of the effect also. Freem. 329.

CAUSA CAUSANS. The immediate cause; the last link in the chain of causation.

CAUSA CAUSANTIS, CAUSA EST CAUSATI. The cause of the thing causing is the cause of the effect. 4 Camp. 284; Marble v. City of Worcester, 4 Gray, Mass., 398.

CAUSA DATA ET NON SECUTA. In the civil law. Consideration given and not followed, that is, by the event upon which it was given. The name of an action by which a thing given in the view of a certain event was reclaimed if that event did not take place. Dig. 12, 4; Cod. 4, 6.

CAUSA ECCLESLÆ PUBLICIS 2EQUIPARATUR; ET SUMMA EST RATIO QUIE PRO RELIGIONE FACIT. The cause of the church is equal to public cause; and paramount is the reason which makes for religion. Co.Litt. 341.

CAUSA ET ORIGO EST MATERIA NEGOTII. The cause and origin is the substance of the thing; the cause and origin of a thing are a material part of it. The law regards the original act. 1 Coke, 99; Wing.Max. 41, Max. 21.

CAUSA HOSPITANDI. For the purpose of being entertained as a guest. 4 Maule & S. 310.

CAUSA JACTITATIONIS MARITAGII. A form of action which anciently lay against a party who boasted or gave out that he or she was married to the plaintiff, whereby a common reputation of their marriage might ensue. 3 Bla.Comm. 93. See Jactitation of Marriage.

CAUSA LIST. See Cause List.

CAUSA MATRIMONII PRLELOCUTI. A writ lying where a woman has given lands to a man in fee-simple with the intention that he shall marry her, and he refuses so to do within a reasonable time, upon suitable request. Cowell. Now obsolete. 3 Bla.Comm. 183, n.

CAUSA MORTIS. In contemplation of approaching death.

CAUSA MORTIS DONATIO. See Donatio Mortis Causa.

CAUSA PATET. The reason is open, obvious, plain, clear, or manifest. A common expression in old writers. Perk. c. 1, §§ 11, 14, 97.

CAUSA PROXIMA. The immediate, nearest, or latest cause. The efficient cause; the one that necessarily sets the other causes in operation. Insurance Co. v. Boon, 95 U.S. 117, 130, 24 L.Ed. 395.

CAUSA PROXIMA NON REMOTA SPECTATUR. An efficient adequate cause being found, it must be considered the true cause unless some other independent cause is shown to have intervened between it and the result. Mead v. Chickasha Gas & Electric Co., 137 Oki. 74, 278 P. 286, 291. The immediate (or direct), not the remote, cause, is looked at, or considered. 12 East, 648; 3 Kent, Comm. 302; Memphis & C. R. Co. v. Reeves, 10 Wall. 191, 19 L.Ed. 909; L. R. 1 C. P. 320; 4 Am. L.Rev. 201. For a distinction, however, between immediate and proximate cause, see "Cause."

CAUSA REI. In the civil law. Things accessory or appurtenant. The accessions, appurtenances, or fruits of a thing; comprehending all that the claimant of a principal thing can demand from a defendant in addition thereto, and especially what he would have had, if the thing had not been withheld from him. Inst. 4, 17, 3; Mackeld. Rom.Law, § 166.

CAUSA REMOTA. A remote or mediate cause; a cause operating indirectly by the intervention of other causes.

CAUSA SCIENTI2E PATET. The reason of the knowledge is evident. A technical phrase in Scotch practice, used in depositions of witnesses.

CAUSA SINE QUA NON. A necessary or inevitable cause; a cause without which the effect in question could not have happened. Hayes v. Railroad Co., 111 U.S. 228, 4 S.Ct. 369, 28 L.Ed. 410. A cause without which the thing cannot be. With reference to negligence, it is the cause without which the injury would not have occurred. Fisher v. Butte Electric Ry. Co., 72 Mont. 594, 235 P. 330, 332.

CAUSA TURPIS. A base (immoral or illegal) cause or consideration.

CAUSA VAGA ET INCERTA NON EST CAUSA RATIONABILIS. 5 Coke, 57. A vague and uncertain cause is not a reasonable cause.

CAUS1E DOTIS, VITIE, LIBERTATIS, FISCI SUNT INTER FAVORABILIA IN LEGE. Causes of dower, life, liberty, revenue, are among the things favored in law. Co.Litt. 341.

CAUSAM NOBIS SIGNIFICES QUARE. A writ addressed to a mayor of a town, etc., who was by the king's writ commanded to give seisin of lands to the king's grantee, on his delaying to do it, requiring him to show cause why he so delayed the performance of his duty. Blount; Cowell.

CAUSARE. In the civil and old English law. To be engaged in a suit; to litigate; to conduct a cause.

CAUSATOR. A litigant; one who takes the part of the plaintiff or defendant in a suit.

In old European law. One who manages or litigates another's cause. Spelman.

CAUSE, v. To be the cause or occasion of ; to effect as an agent; to bring about; to bring into existence; to make. La Page v. *U.* S., C.C.A. Minn., 146 F.2d 536, 538, 156 A.L.R. 965; Huffman v. U. S., C.C.A.Colo., 259 F. 35, 38; Shea v. U. S., C.C.A.Ohio, 251 F. 440, 447. To induce; to compel. Hill v. Montgomery, 352 Mo. 147, 176 S.W. 2d 284, 287.

CAUSE, n. (Lat. *causa.)* Each separate antecedent of an event, Griffin v. Anderson Motor Service Co., 227 Mo.App. 855, 59 S.W.2d 805, 808.

Means, Metropolitan Life Ins. Co. v. Funderburk, Tex.Civ.App., 81 S.W.2d 132, 137. Motive, In re Canal Bank & 'trust Co.'s Liquidation, 178 La. 575, 152 So. 297, 298. Probable cause, State v. Brockman, 231 Wis. 634, 283 N.W. 338, 340. Producing cause, Traders & General Insurance Co. v. Ray, Tex.Civ.App., 128 S.W.2d 80, 84. Sum of antecedents of an event, Burns v. Eminger, 84 Mont. 397, 276 P. 437, 442; Griffin v. Anderson Motor Service Co., 227 Mo.App. 855, 59 S.W.2d 805, 808. That which produces an effect; whatever moves, impels or leads. Weinberg v. Richardson, 291 Ill. App. 618, 10 N.E.2d 893; Merlo v. Public Service Co. of Northern Illinois, 381 Ill. 300, 45 N.E.2d S65, 675; State v. Craig, 161 S.C. 232, 159 S.E. 559, 560. The origin or foundation of a thing, as of a suit or action; a ground of action. State v. Dougherty, 4 Or. 203.

As used with reference to the removal of an officer or employee, "cause" means a just, not arbitrary, cause ; one relating to a material matter, or affecting the public interest. Brokaw v. Burk, 89 N.J.Law, 132, 98 A. 11, 12; a cause relating to and affecting administration of office and of substantial nature directly affecting public's rights and interests, State ex rel. Rockwell v. State Board of Education, 213 Minn. 184, 6 N.W.2d 251, 260, 143 A.L.R. 503.

Conduct indicating unworthy or illegal motives or improper administration of power, Voorhees v. Kopler, 239 App.Div. 83, 265 N.Y.S. 532, 533; Tappan v. Helena Federal Savings & Loan Ass'n of Helena, Ark., 193 Ark. 1023, 104 S.W.2d 458, 459; Zurich General Accident & Liability Ins. Co. v. Kinsler, 12 Ca1.2d 98, 81 P.2d 913, 915; misfeasance or nonfeasance, Schoonover v. City of Viroqua, 244 Wis. 615, 12 N.W.2d 912, 914; As used in fraternal benefit society by-law authorizing suspension of subordinate council and dissolution of its charter, "cause," means legal cause or just cause, a substantial, reasonable, or just cause. Wichita Council No. 120 of Security Ben. Ass'n v. Security Ben. Ass'n, 138 Kan. 841, 28 P.2d 976, 979, 94 A.L.R. 629.

"Cause" and "consequence" are correlative terms. Kelsey v. Rebuzzini, 87 Conn. 556, 89 A. 170, 171, 52 L.R.A., N.S., 103; In re Benson, 178 Okl. 299, 62 P.2d 962, 965.

Clause for termination of employment for "any cause" held to refer to cause justifying termination for employee's breach of contract, not arbitrarily. Parsil v. Emery, 242 App.Div. 653, 272 N.Y.S. 439, 440.

Statute permitting an award to be set aside for "cause" means for good cause or some such cause as fraud or surprise, Elsenpeter v. Potvin, 213 Minn. 129, 5 N.W.2d 499, 501.

### In Civil and Scotch Law

The consideration of a contract, that is, the inducement to it, or motive of the contracting party for entering into it. Dig. 2, 14, 7; Toullier, liv. 3, tit. 3, c. 2, § 4; 1 Abb. 28; Bell, Dict.

The civilians use the term "cause," in relation to obligations, in the same sense as the word "consideration" is used in the jurisprudence of England and the United States. It means the motive, the inducement to the agreement,-id *quod inducet ad contrahendum.* Mouton v. Noble, 1 La. Ann. 192. But see Ames, 3 Sel.Essays in Anglo-Amer.Leg.Hist. 279; Poll.Contr. 74.

Used also in the civil law in the sense of *res* (a thing). *Non porcellum, non agnellum nec alia causa* (not a hog, not a lamb, nor other thing). Du Cange.

### In Pleading

Reason; motive; matter of excuse or justification. See S Co. 67; 11 East 451; 1 Chit.Pl. 585.

### In Practice

A suit, litigation, or action. Any question, civil or criminal, litigated or contested before a court of justice.

As used in venue statute, "cause" means "cause of action", which means the right which a party has to institute a judicial proceeding. Bergin v. Temple, 111 Mont. 539, 111 P.2d 286, 289, 133 A.L.R. 1115.

Cause imports a judicial proceeding entire, and is nearly synonymous with *lis* in Latin, or suit in English. "Case" not infrequently has a more limited signification, importing a collection of facts, with the conclusion of law thereon. See Shirts v. Irons, 47 Ind. 445; Erwin v. U. S., D.C. Ga., 37 Fed. 470, 2 L.R.A. 229. But "cause" and "case" are often synonymous. Zilz v. Wilcox, 190 Mich. 486, 157 N.W. 77, 80; Schmalz v. Arnwine, 118 Or.,300. 246 P. 718, 719; Cheney v. Richards, 130 Me. 288, 155 A. 642, 644.

A distinction is sometimes taken between "cause" and "action." Burrill observes that a cause is not, like an action or suit, said to be commenced, nor is an action, like a cause, said to be tried. But, if there is any substantial difference between these terms, it must lie in the fact that "action" refers more peculiarly to the *legal procedure* of a controversy ; "cause" to its *merits* or the state of facts involved. Thus, we cannot say "the *cause* should have been replevin." Nor would it *be* correct to say "the plaintiff pleaded his own *action."*

As to "Probable Cause" and "Proximate Cause," see those titles. As to challenge "for cause," see "Challenge."

CAUSE-BOOKS. Books kept in the central office of the English supreme court, in which are entered all writs of summons issued in the office. Rules of Court, v 8.

CAUSE LIST. In English practice. A printed roll of actions, to be tried in the order of their entry, with the names of the solicitors for each litigant. Similar to the calendar of causes, or docket, used in American courts.

CAUSE OF ACTION. A "cause of action" may mean one thing for one purpose and something different for another. Venezuelan Meat Export Co. v. U. S., D.C.Md., 12 F.Supp. 379, 383; U. S. v. Memphis Cotton Oil Co., Ct.C1., 288 U.S. 62, 53 S. Ct. 278, 280, 77 L.Ed. 619.

It may mean : accident, Maryland Casualty Co. v. Gerlaske, C.C.A.Tex., 68 F.2d 497, 499; act causing injury, Fiscus v. Kansas City Public Service Co., 153 Kan. 493, 112 P.2d 83, 85; action, Wattman v. St. Luke's Hospital Ass'n, 314 Ill.App. 244, 41 N.E.2d 314, 319; averment of facts sufficient to justify a court in rendering a judgment, Mobley v. Smith, 24 Ala.App. 553, 138 So. 551; Vickers v. Vickers, 45 Nev. 274, 202 P. 31, 32; breach of contract or agreement, Press v. Davis, Tex.Civ.App., 118 S.W.2d 982, 989, 990; breach of duty. Shapiro v. McCarthy, 279 Mass. 425, 181 N.E. 842, 844; case, Colla v. Carmichael U-Drive Autos, 111 Cal.App. 378, 294 P. 378, 380; claim, Bishop v. Jensen, 212 Wis. 30, 248, N.W. 771, 772; East Side Mill & Lumber Co. v. Southeast Portland Lumber Co., 155 Or. 367, 64 P.2d 625, 627, 628; concept of law of remedies. Rooney v. Maczko, 315 Pa. 113, 172 A. 151, 153; U. S. v. Memphis Cotton Oil Co., Ct.C1., 288 U.S. 62, 53 S.Ct. 278, 280, 77 L.Ed. 619; concurrence of the facts giving rise to enforceable claim, United States v. Standard Oil Co. of California, D.C.Cal., 21 F.Supp. 645, 660; contract, Stone Fort Nat. Bank of Nacogdoches v. Forbess, 126 Tex. 568, 91 S.W.2d 674; demand, State v. Vincent, 152 Or. 205, 52 P.2d 203, 206; every fact which it is necessary to establish to support right or obtain judgment, Beale v. Cherryhomes, Tex.Civ.App., 21 S.W.2d 65, 66; Dublin Mill & Elevator Co. v. Cornelius, Tex.Civ.App., 5 S.W.2d 1027, 1028; fact, or a state of facts to which law, sought to be enforced against a person or thing, applies. Gulf, C. & S. F. Ry. Co v. Cities Service Co., D.C.Del., 270 F. 994, 995; Condor Pe-

troleum Co. v. Greene, Tex.Civ.App., 164 S.W.2d 713, 718; Burns v. Duncan, 23 Tenn. App. 374, 133 S.W.2d 1000, 1004; facts constituting wrong, Whalen v. Strong, 230 App.Div. 617, 246 N.Y.S. 40, 45; facts which give rise to one or more relations of right-duty between two or more persons, Elliott v. Mosgrove, 162 Or. 507, 93 P.2d 1070, 1072, 1073, 1076; failure to perform legal obligation to do, or refrain from performance of, some act, In re Canfield's Will, 165 Misc. 66, 300 N.Y.S. 502; ground on which an action may be maintained or sustained, ground or reason for an action, East Side Mill & Lumber Co. v. Southeast Portland Lumber Co., 155 Or. 367, 64 P.2d 625, 627, 628. Juncture of wrong and damage, City of Newport v. Rawlings, 289 Ky. 203, 158 S:W.2d 12, 14; legal duty and breach of duty, Alford v. Zeigler, 65 Ga.App. 294, 16 S.E.2d 69, 74; legal liability arising out of facts, White v. Nemours Trading Corporation, D.C.Mass., 290 F. 250, 252; legal obligation, Hartford Accident & Indemnity Co. v. Clegg, 103 Utah 414, 135 P.2d 919, 922, 923; legal right in plaintiff and duty in defendant and violation or breach of right or duty, Evan's v. Williams, 291 Ky. 484, 165 S.W.2d 52, 54; legal right of action. Inhabitants of Town of Milo v. Milo Water Co., 129 Me. 463, 152 A. 616, 617; legal right violated, Howard v. Brown, 172 Okl. 308, 44 P.2d 959, 961; legal wrong threatened or committed, Connor v. Williams, 187 S.C. 119, 197 S.E. 211, 214; matter for which action may be brought, Ex parte Teeters, 130 Or. 631, 280 P. 660, 662; Williams v. City of Dallas, Tex.Civ.App., 52 S.W.2d 373, 375; negligent act or acts, Cox v. Wilkes-Barre R. Corporation, 334 Pa. 568, 6 A.2d 538, 539; obligation, United States v. Standard Oil Co. of California, D.C.Cal., 21 F.Supp. 645, 660; occurrence which gives rise to litigation, Maryland Casualty Co. v. Gerlaske, C.C.A.Tex., 68 F.2d 497, 499; particular matter for which suit is brought, Severance v. Heyl & Patterson, 115 Pa.Super. 36, 174 A. 787, 789; power to enforce obligation, Woods v. Cook, 14 Cal.App.2d 560, 58 P.2d 965, 966; primary right and corresponding duty and delict or wrong, Vasu v. Kohlers, Inc., 145 Ohio St. 321, 61 N.E.2d 707, 714; redressible wrong, Meshek v. Cordes, 164 Okl. 40, 22 P.2d 921, 926 ; or breach of duty by defendant, Skalowski v. Joe Fisher, Inc., 152 S.C. 108, 149 S.E. 340, 344, 65 A. L.R. 1427; American Nat. Ins. Co. v. Warnock, Tex.Civ. App., 143 S.W.2d 624, 628; right of action or right of recovery, Williams v. City of Dallas, Tex.Civ.App., 52 S.W. 2d 373, 375 ; Graham v. Scripture, 26 How.Prac., N.Y., 501; right to bring suit, Viers v. Webb, 76 Mont. 38, 245 P. 257, 259; Grenada Bank v. Petty, 174 Miss. 415, 164 So. 316, 318; right to enforce obligations. Woods v. Cook, 14 Cal.App.2d 560, 58 P.2d 965, 966; right to prosecute an action with effect. Travelers' Ins. Co. v. Louis Padula Co., 224 N.Y. 397, 121 N.E. 398. 350; right to recover something from another, Universal Oil Products Co. v. Standard Oil Co. of Indiana, D.C.Mo., 6 F.Supp. 37, 39; right to relief in court, Kittinger v. Churchill Evangelistic Ass'n, 239 App.Div. 253, 267 N.Y.S. 719, 722; Mulligan v. Bond & Mortgage Guarantee Co., 193 App.Div. 741, 184 N.Y.S. 429, 431; subject matter of the controversy, Johnson v. Jordan, D.C.Okl., 22 F.Supp. 286, 289; subject-matter on which plaintiff grounds his right of recovery, Zelen v. Domestic Industries, 131 Neb. 123, 267 N.W. 352, 354; East Side Mill & Lumber Co. v. Southeast Portland Lumber Co., 155 Or. 367, 64 P.2d 625, 627, 628; that which creates necessity for bringing action, Brevick v. Cunard S. S. Co., 63 N. D. 210, 247 N.W. 373, 375; that which produces or effects result complained of, Jacobson v. Mutual Ben. Health & Accident Ass'n, 73 N.D. 108, 11 N.W.2d 442, 445, 446; unlawful violation of a right. Keith v. Texas & P. R. Co., 14 La.App. 290, 129 So. 190, 194; violation or invasion of right, East Side Lumber & Coal Co. v. Barfield, 193 Ga. 273, 18 S.E.2d 492, 496; wrong committed or threatened, Criswell v. Criswell, 101 Neb. 349, 165 N.W. 302.

It may sometimes mean a person having a right of action. Thus, where a legacy is left to a married woman, and she and her husband bring an action to recover it, she is called in the old books the "meritorious cause of action." 1 H.B1. 108.

A distinction may be taken between "cause of action" and "right of action." Elliott v. Chicago, M. & St. P. Ry. Co., 35 S.D. 57, 150 N.W. 777, 779. The cause of action is distinct .from the "remedy." Tonn v. Inner Shoe Tire Co., Tex.Civ.App., 260 S.W. 1078, 1080. And the cause of action may exist, though the remedy does not. Chandler v. Horne, 23 Ohio App. 1, 154 N.E. 748, 750.

Cause of action is not synonymous with chose in action. Bank of Commerce v. Rutland & W. R. Co., 10 How.Prac., N.Y., 1. But under a Montana statute, If the relief sought is the recovery of money or other personal property, the cause of action is designated a "thing in action." State v. District Court of Tenth Judicial Dist. in and for Fergus County, 74 Mont. 355, 240 P. 667, 669.

CAUSE OF INJURY. That which actually produces it, Anderson v. Byrd, 133 Neb. 483, 275 N. W. 825, 826.

CAUSE SUIT TO BE BROUGHT. Commence or begin, State v. Osen, 67 N.D. 436, 272 N.W. 783, 784.

CAUSES CELEBRES. Celebrated cases. A work containing reports of the decisions of interest and importance in French courts in the seventeenth and eighteenth centuries.

Secondarily a single trial or decision is often called a *"cause celébre,"* when it is remarkable on account of the parties involved or the unusual, interesting, or sensational character of the facts.

CAUSEWAY. A raised roadbed through low lands; it differs from a levee. Board of Sup'rs of Quitman County v. Carrier Lumber & Mfg. Co., 103 Miss. 324, 60 So. 326, 327. See, also, Coleman-Fulton Pasture Co. v. Aransas County, Tex.Civ. App., 180 S.W. 312, 313.

CAUSIDICUS. In the civil law. A speaker or pleader; one who argued a cause ore *tenus.* See "Advocate."

CAUTELA. Lat. Care; caution; vigilance; prevision.

CAUTI JURATORIA. See "Caution Juratory."

CAUTIO. In the Civil and French law. Security given for the performance of any thing; bail; a bond or undertaking by way of surety. Also the person who becomes a surety.

In Scotch law. A pledge, bond, or other security for the performance of an obligation, or completion of the satisfaction to be obtained by a judicial process. Bell, Dict.; 6 Mod. 162.

CAUTIO FIDEJUSSORIA. Security by means of bonds or pledges entered into by third parties. Du Cange.

CAUTIO MUCIANA. Security given by an heir or legatee, to obtain immediate possession of inheritance or legacy, for observance of a condition annexed to the bequest, where the act which is the object of the condition is one which he must avoid committing during his whole life, *e. g.,* that he will never marry, never leave the country, never engage in a particular trade, etc. See Mackeld. Rom.Law, § 705.

CAUTIO PIGNORATITIA. Security given by pledge, or deposit, as plate, money, or other goods.

CAUTIO PRO EXPENSIS. Security for costs, charges, or expenses.

CAUTIO USUFRUCTUARIA. Security, which tenants for life give, to preserve the property rented free from waste and injury. Ersk.Inst. 2, 9, 59.

CAUTION. In Scotch law, and in admiralty law. Surety; security; bail; an undertaking by way of surety. 6 Mod. 162. See Cautio. See also Prudence; Cautious.

To warn, exhort, to take heed, or give notice of danger. Arnold v. United States, C.C.A.Colo., 94 F.2d 499, 501.

CAUTION JURATORY. In Scotch law. Security given by oath. That which a suspender swears is the best he can afford in order to obtain a suspension. Ersk.Pract. 4, 3, 6.

CAUTIONARY. In Scotch law. An instrument in which a person binds himself as surety for another.

CAUTIONARY JUDGMENT. Where an action in tort was pending and the plaintiff feared the defendant would dispose of his real property before judgment, a cautionary judgment was entered with a lien on the property; Seisner v. Blake, 13 Pa.Co.Ct.R. 333; so in an action on a note against a religious association, where it was alleged that the defendant was endeavoring to sell its real estate before judgment on the note; Witmer & Dundore v. Port Treverton Church, 17 Pa.Co.Ct.R. 38.

CAUTIONE ADMITTENDA. In English ecclesiastical law. A writ that lies against a bishop who holds an excommunicated person in prison for contempt, notwithstanding he offers sufficient caution or security to obey the orders and commandment of the church for the future. Reg.Orig. 66; Cowell.

CAUTIONER. In Scotch law. A surety; a bondsman. One who binds himself in a bond with the principal for greater security. He is still a cautioner whether the bond be to pay a debt, or whether he undertake to produce the person of the party for whom he is bound. Bell.

CAUTIONNEMENT. In French law. The same as becoming surety in English law.

CAUTIONRY. In Scotch law. Suretyship.

CAUTIOUS. Careful; prudent. Horton v. New York Cent. R. Co., 205 App.Div. 763, 200 N.Y.S. 365, 366.

The terms "cautious" and "prudent" may be used interchangeably in defining negligence. Malcolm v. Mooresville Cotton Mills, 191 N.C. 727, 133 S.E. 7, 9. But "cautious" differs from "prudent" in suggesting the idea of timidity, with its secondary meaning as overprudent; fearful. People v. Anderson, 58 Cal.App. 267, 208 P. 324, 325. See Prudence.

CAVEAT. Lat. Let him beware.

An intimation to a judge or officer notifying him to suspend a proceeding until merits of the caveat are determined. In re Phillips' Estate, 293 Pa. 351, 143 A. 9. A formal notice or warning given by a party interested to a court, judge, or ministerial officer against the performance of certain acts within his power and jurisdiction. This process may be used in the proper courts to prevent (temporarily or provisionally) the proving of a will or the grant of administration, or to arrest the enrollment of a decree in chancery when the party intends to take an appeal, to prevent the grant of letters patent, etc. It is also used, in the American practice, as a kind of equitable process, to stay the granting of a patent for lands. Ex parte Crafts, 28 S.C. 281, 5 S.E. 718; In re McCahan's Estate, 221 Pa. 188, 70 A. 711; See, also, 1 Burn, Eccl.Law 19, 263; Nelson, Abr. ; Dane, Abr. ; Ayliffe, *Parerg.;* 3 Bla. Comm. 246; 2 Chit.Pr. 502, note b; 3 Redf.Wills 119; Poph. 133; 1 Sid. 371.

In patent law. A formal written notice to officers of the patent-office, requiring them to refuse letters patent on a particular invention or device to any other person, until the party filing the caveat (called the "caveator") shall have an opportunity to establish his claim to priority of invention. The practice was abolished by act of June 25, 1910, c. 414, § 1, 36 Stat. 843.

CAVEAT ACTOR. Let the doer, or actor, beware.

CAVEAT EMPTOR. Let the buyer beware (or take care). Kellogg Bridge Co. *v.* Hamilton, 110 U.S. 108, 116, 3 S.Ct. 537, 28 L.Ed. 86.

This maxim summarizes the rule that a purchaser must examine, judge, and test for himself, Miller v. Tiffany, 1 Wall. 309, 17 L.Ed. 540; Hargous v. Stone, 5 N.Y. 82; Humphrey v. Baker, 71 Okl. 272, 176 P. 896; the purchaser at sheriff's sales must inform himself of extent of judgment debtor's title, Brightwell v. First Nat. Bank, C.C.A.Fla., 109 F.2d 271, 273; the purchaser takes risk of quality and condition unless he protects himself by a warranty or there has been a false representation, State ex rel. Jones Store Co. v. Shain, Mo., 179 S.W.2d 19, 20. There is no warranty of title. McKnight v. Johnson, 236 Ky. 763, 34 S.W.2d 239, 240.

CAVEAT EMPTOR, Q1UI IGNORARE NON DEBUIT QUOD JUS ALIENUM EMIT. Hob. 99. Let a purchaser beware, who ought not to be ignorant that he is purchasing the rights of another. Let a buyer beware; for he ought not to be ignorant of what they are when he buys the rights of another. Broom, Max. 768; Co.Litt. 132 a; 3 Taunt. 439; Sugd. V. & P. 328; 1 Story, Eq.Jur. ch. 6.

CAVEAT TO WILL. A demand that will be produced and probated in open court. An attack on validity of alleged will. Whitehurst v. Abbott, 225 N.C. 1, 33 S.E.2d 129, 132.

CAVEAT VENDITOR.

In Roman law. A maxim, or rule, casting the responsibility for defects or deficiencies upon the *seller* of goods. See Hargous v. Stone, 5 N.Y. 73.

In English and American Jurisprudence. *Caveat venditor* is sometimes used as expressing, in a rough way, the rule which governs all those cases of sales to which *caveat emptor* does not apply.

CAVEAT VIATOR. Let the wayfarer beware. Broom, Max. 387, n.; 10 Exch. 774. This phrase has been used as a concise expression of the duty of a traveler on the highway to use due care to detect and avoid defects in the way. Cornwell v. Com'rs, 10 Exch. 771, 774.

CAVEATOR. One who files a caveat.

CAVENDUM EST A FRAGMENTIS. Beware of fragments. Bac.Aph. 26.

CAVERE. Lat. In the civil and common law. To take care; to exercise caution; to take care or provide for; to provide by law; to provide against; to forbid by law; to give security; to give caution or security on arrest.

CAVERS. Persons stealing ore from mines in Derbyshire, punishable in the berghmote or miners' court; also officers belonging to the same mines. Wharton.

CAYA. In old English law. A quay, kay, key, or wharf. Cowell.

CAYAGIUM. In old English law. Cayage or kayage; a toll or duty anciently paid the king for landing goods at a quay or wharf. The barons of the Cinque Ports were free from this duty. Cowell.

CEAP. A bargain; anything for sale; a chattel; also cattle, as being the usual medium of barter. Sometimes used instead of ceapgild, *(q. v.)*.

CEAPGILD. Payment or forfeiture of an animal. An ancient species of forfeiture. Cowell.

CEASE. To stop; to become extinct; to pass away; to come to an end. MacDonald v. /Etna Indemnity Co., 90 Conn. 226, 96 A. 926, 927; Martin v. Gray, 193 Ark. 32, 97 S.W. 439, 441. Suspend or forfeit. Marks v. La Guardia, Sup., 31 N.Y.S.2d 336, 350. A cessation of activity. Huasteca Petroleum Co. v. Cia de Navegacao Lloyd Brasileiro, D.C.N.Y., 297 F. 318, 321; In re Simpson, 62 Cal.App. 549, 217 P. 789, 790.

City of Macon v. Bunch, 156 Ga. 27, 118 S.E. 769, held that a city detective, by being kept in jail for 31 days to answer an indictment, did not cease to perform the duties of his office so as to cause a vacancy therein.

CEASE TO DO BUSINESS. A going concern ceases to do business when it sells all its property, plant, assets of all kinds, including cash, and the buyer takes possession. Van Oss v. Premier Petroleum Co., 113 Me. 180, 93 A. 72, 77.

CEDE. To yield up; to assign; to grant. Generally used to designate the transfer of territory from one government to another. Goetze v. United States, C.C.N.Y., 103 Fed. 72; Baltimore v. Turnpike Road, 80 Md. 535, 31 A. 420.

CEDENT. In Scotch law. An assignor. One who transfers a chose in action. Kames, Eq. 43.

CEDO. I grant. The word ordinarily used in Mexican conveyances to pass title to lands. Mulford v. Le Franc, 26 Cal. 88, 108.

CEDULA.

In old English law. A schedule.

In Spanish law. An act under private signature, by which a debtor admits the amount of the debt, and binds himself to discharge the same on a specified day or on demand. Also the notice or citation affixed to the door of a fugitive criminal requiring him to appear before the court where the accusation is pending.

CEDULE. In French law. The technical name of an act under private signature. Campbell v. Nicholson, 3 La.Ann. 458.

CELATION. In medical jurisprudence. Concealment of pregnancy or delivery.

CELDRA. In old English law, a chaldron. In old Scotch law, a measure of grain, otherwise called a "chalder." See 1 Karnes, Eq. 215.

CELEBRATION OF MARRIAGE. The formal act by which a man and woman take each other for husband and wife, according to law; the solemnization of a marriage. The term is usually applied to a marriage ceremony attended with ecclesiastical functions. See Pearson v. Howey, 11 N.J. Law, 19.

CELIBACY. The condition or state of life of an unmarried person.

CELLERARIUS. A butler in a monastery; sometimes in universities called "manciple" or "caterer."

CEMETERY. A graveyard; burial ground. Peterson v. Stolz, Tex.Civ.App., 269 S.W. 113, 117; Village of Villa Park v. Wanderer's Rest Cemetery Co., 316 Ill. 226, 147 N.E. 104, 105. Place or area set apart for interment of the dead. City of Wichita v. Schwertner, 130 Kan. 397, 286 P. 266, 268, Damon v. State, Tex.Com.App., 52 S.W.2d 368, 370.

Term includes not only lots for depositing the bodies of the dead, but also avenues, walks, and grounds for shrubbery and ornamental purposes. Ex parte Adlof, 86 Tex. Cr.R. 13, 215 S.W. 222, 223. Town of Blooming Grove v. Roselawn Memorial Park Co., 231 Wis. 492, 286 N.W. 43, 45. A place of burial, differing from a churchyard by its locality and incidents. Wharton. See Winters v. State, 9 Ind. 174; Cemetery Ass'n v. New Haven, 43 Conn. 243, 21 Am.Rep. 643.

Six or more human bodies being buried at one place constitutes the place a cemetery.

CEMETERY WORK. Platting, grading, planting, beautifying, and maintaining a tract of land in such manner as to render it a proper place for sepulture of the dead, and to preserve it as such. Rosedale Cemetery Ass'n v. Industrial Accident Commission of California, 37 Cal.App. 706, 174 P. 351, 352.

CENDUL1E. Small pieces of wood laid in the form of tiles to cover the roof of a house; shingles. Cowell.

CENEGILD. In Saxon law. An expiatory mulct or fine paid to the relations of a murdered person by the murderer or his relations. Spelman.

CENELLAZE. In old records. Acorns.

CENNINGA. A notice given by a buyer to a seller that the things which had been sold were claimed by another, in order that he might appear and justify the sale. Blount; Whishaw. But the exact significance of this term is somewhat doubtful. Spelman, Gloss.

CENS. In French Canadian law. An annual tribute or due reserved to a seignior or lord, and imposed merely in recognition of his superiority. Guyot, Inst. c. 9. The *tens* varies in amount and in mode of payment. 2 Low.C. 40. See Censive; Censitaire.

CENSARIA. In old English law. A farm, or house and land let at a standing rent. Cowell.

CENSARII. In old English law. Farmers, or such persons as were liable to pay a census, (tax.) Blount; Cowell.

CENSERE. In the Roman law. To ordain; to decree. Dig. 50, 16, 111.

CENSITAIRE. In Canadian law. A tenant by *cens, (q. v.)*

CENSIVE. In Canadian law. Tenure by *cens, (q.* v.)

CENSO. In Spanish and Mexican law. An annuity. A ground rent. The right which a person acquires to receive a certain annual pension, for the delivery which he makes to another of a determined sum of money or of an immovable thing. Civ.Code Mex. art. 3206. See Schm.Civil Law, 149, 309; White, New Recop. bk. 2, c. 7, § 4.

CENSO AL QUITAR. A redeemable annuity; otherwise called "censo redimible." Trevino v. Fernandez, 13 Tex. 630.

CENSO CONSIGNATIVO. A *censo (q. v.)* is called *"consignativo"* when he who receives the money assigns for the payment of the pension (annuity) the estate the fee in which he reserves. Civ.Code Mex. art. 3207.

CENSO ENFITEUTICO. In Spanish and Mexican law. An emphyteutic annuity. That species of *censo* (annuity) which exists where there is a right to require of another a certain canon or pension annually, on account of having transferred to that person forever certain real estate, but reserving the fee in the land. The owner who thus transfers the land is called the *"censualisto,"* and the person who pays the annuity is called the *"censatario."* Hall, Mex.Law, § 756; Hart v. Burnett, 15 Cal. 557.

CENSO RESERVATIO. In Spanish and Mexican law. The right to receive from another an annual pension by virtue of having transferred land to him by full and perfect title. Trevino v. Fernandez, 13 Tex. 655.

CENSORSHIP. The denial of right of "freedom of the press" and of right of "freedom of speech", and of all those rights and privileges which are had under a free government. Esquire, Inc., v. Walker, D.C.D.C., 55 F.Supp. 1015, 1020.

CENSUALES. In old European law. A species of *oblati* or voluntary slaves of churches or monasteries; those who, to procure the protection of the church, bound themselves to pay an annual tax or quit-rent only of their estates to a church or monastery.

CENSUERE. In Roman law. They have decreed. The term of art, or technical term for the judgment, resolution, or decree of the senate. Tayl. Civil Law, 566.

CENSUMETHIDUS, or CENSUMORTHIDUS. A dead rent, like that which is called "mortmain." Blount; Cowell.

CENSURE. In ecclesiastical law. A spiritual punishment.

It consists in withdrawing from a baptized person (whether belonging to the clergy or the laity) a privilege which the church gives him, or in wholly expelling him from the Christian communion. The principal varieties of censures are admonition, degradation, deprivation, excommunication, penance, sequestration, suspension. Phillim. Ecc. Law, 1367.

A custom observed in certain manors in Devon and Cornwall, where all persons above the age of sixteen years are cited to swear fealty to the lord, and to pay 11d. per poll, and id. per annum.

CENSUS. The official counting or enumeration of people of a state, nation or district, Huntington v. Cast, 149 Ind. 255, 48 N.E. 1025; Republic v. Paris, 10 Hawaii, 581; Vale Independent Consol. School Dist. No. 2 of Butte County v. School Dist. No. 71 of Meade County, 54 S.D. 207, 222 N.W. 948. It is a finding of the population and not an "estimate." State ex rel. Reynolds v. Jost, 265 Mo. 51, 175 S.W. 591, 597, Ann.Cas.1917D, 1102.

In Roman law. A numbering or enrollment of the people, with a valuation of their fortunes.

In old European law. A tax, or tribute; *a* toll. Montesq. Esprit des Lois, liv. 30, c. 14.

CENSUS REGALIS. In English law. The annual revenue or income of the crown.

CENT. A coin of the United States, the least in value of those now minted. It is the hundredth part of a dollar. Its weight is 48 *gr.,* and it is composed of ninety-five per centum of copper and of five per centum of tin and zinc in such proportions as shall be determined by the Director of the Mint. Act of Feb. 12, 1873, § 16. See Rev.Stat. § 3515, 31 U.S.C.A. § 317.

CENTAL. A weight of 100 pounds avoirdupois, used at Liverpool for corn. Cent.Dict. Usually called *hundredweight* in the United States.

CENTENA. A hundred. A district or division containing originally a hundred freemen, established among the Goths, Germans, Franks, and Lombards, for military and civil purposes, and answering to the Saxon "hundred." Spelman; 1 Bl.Comm. 115.

Also, in old records and pleadings, a hundred weight.

CENTENARII. Petty judges, under-sheriffs of counties, that had rule of a hundred, (centena,) and judged smaller matters among them. 1 Vent. 211.

CENTENI. The principal inhabitants of a *centena,* or district composed of different villages, originally in number a hundred, but afterwards only called by that name.

CENTER. This term is often used, not in its strict sense of a geographical or mathematical center, but as meaning the middle or central point or

portion of anything. Bass v. Harden, 160 Ga. 400, 128 S.E. 397, 400; Hill v. Ralph, 165 Ark. 524, 265 S.W. 57, 58; Darnell v. Ransdall, Mo.App., 277 S.W. 372, 373.

The center of a section of land is the intersection of a straight line from the north quarter corner to the south quarter corner with a straight line from the east quarter corner to the west quarter corner. Lunz v. Sandmeier's Estate, 172 Minn. 338, 215 N.W. 426. Similarly, the center of a street intersection refers to the point where the center lines of the two streets cross. Thrush *v.* Lingo Lumber Co., Tex.Civ.App., 262 S.W. 551, 552. The edges of the hardened surface of a road constitute the "bounds of the highway" in determining "center" of highway at an intersection. Decker v. Roberts, 126 Conn. 478, 12 A.2d 541, 543. The center of *the* main channel of a river, is the middle of broad and distinctly defined bed of main river, Hill City Compress Co. v. West Kentucky Coal Co., 155 Miss. 55, 122 So. 747, 748.

CENTESIMA, In Roman law. The hundredth part.

*Usurice centesimce.* Twelve per cent. per annum; that is, a hundredth part of the principal was due each month, —the month being the unit of time from which the Romans reckoned interest. 2 Bl.Comm. 462, note.

CENTIME. The name of a denomination of French money, being the one-hundredth part of a franc.

CENTRAL CRIMINAL COURT. Since 1834, an English court, having jurisdiction for the trial of crimes and misdemeanors committed in London and certain adjoining parts of Kent, Essex, and Sussex, and of such other criminal cases as may be sent to it out of the king's bench superseded the "Old Bailey."

CENTRAL OFFICE. The central office of the supreme court of judicature in England is the office established in pursuance of the recommendation of the legal departments commission in order to consolidate certain offices. It is divided into departments. Sweet.

CENTRAL STATION. A plant at which electric current is generated to supply consumers. People ex rel. Taylor v. Walsh, 140 Misc. 25, 248 N.Y.S. 753, 757.

CENTRAL TRAFFIC CONTROL. A system of railroad operation for directing the movement of trains by signals controlled from a central point. Van Schaick v. McCarthy, C.C.A.Colo., 116 F.2d 987, 990.

CENTRAL VISION. The exact and clear vision of the thing one looks directly at. Baugh v. Glassell-Rogers Drilling Co., La.App., 190 So. 130, 132.

CENTRALIZATION. The system of government in a country where management of local matters is in the hands of functionaries appointed by the ministers of state, paid by the state, and in constant communication and under the constant control and inspiration of the ministers of state, and where the funds of the state are largely applied to local purposes. Wharton.

CENTUMVIRI. In Roman law. The name of an important court consisting of a body of one hundred and five judges. 3 Bla.Comm. 515.

CENTURY. One hundred. A body of one hundred men. The Romans were divided into *centuries* as the English were divided into hundreds.

Also a cycle of one hundred years.

CEORL. In Anglo Saxon law. A class of freemen personally free, but possessing no landed property. Guizot, Rep.Govt.

A tenant at will of free condition, who held land of the thane on condition of paying rent or services. Cowell.

A freeman of inferior rank occupied in husbandry. Spelman.

Under the Norman rule, this term, as did others which denoted workmen, especially those which applied to the conquered race, became a term of reproach, as is indicated by the popular signification of churl. Cowell; 1 Poll. & Maitl. 8; 2 *id.* 458.

CEP'. Lat. I have taken. This word was of frequent use in the returns of sheriffs when they were made in Latin, and particularly in the return to a writ of *capias.*

The full return (in Latin) to a writ of *copies* was commonly made in one of the following forms : *Cepi corpus,* I have taken the body, 1. e., arrested the body of the defendant; Cepi *corpus et bail,* I have taken the body and released the defendant on a bail-bond; *Cepi corpus et cornmittitur,* I have taken the body and he has been committed (to prison) ; *Cepi corpus et est in custodia,* I have taken the defendant and he is in custody; *Cepi corpus et est languidus,* I have taken the defendant and he is sick, i. e., so sick that he cannot safely be removed from the place where the arrest was made; *Cepi corpus et paratum habeo,* I have taken the body and have it (him) ready, I. e., in custody and ready to be produced when ordered.

CEPIT.

In civil practice. He took. This was the characteristic word employed in (Latin) writs of trespass for goods taken, and in declarations in trespass and replevin.

Replevin *in the cepit is a* form of replevin which is brought for carrying away goods merely. Wells, Repl. 53; Ford v. Ford, 3 Wis. 399.

In criminal practice. A technical word necessary in an indictment for larceny. The charge must be that the defendant took the thing stolen with a felonious design. Bac.Abr. "Indictment," G, 1.

CEPIT ET ABDUXIT. He took and led away. The emphatic words in writs in trespass or indictments for larceny, where the thing taken was a living chattel, *i. e.,* an animal.

CEPIT ET ASPORTAVIT. He took and carried away. Applicable in a declaration in trespass or an indictment for larceny where the defendant has carried away goods without right. 4 Bl, Comm. 231.

CEPIT IN ALIO LOCO. In pleading. A plea in replevin, by which the defendant alleges that he took the thing replevied in another place than that mentioned in the declaration. 1 Chit.P1. 490; Rast.Entr. 554, 555; Morris, Repl. 141; Wells Repl. § 707.

CEPPAGIUM. In old English law. The stump: or roots of trees which remain in the ground after the trees are felled. Fleta, lib. 2, c. 41, § 24.

CERA, or CERE. In old English law. Wax; a seal.

CERA IMPRESSA. Lat. An impressed seal.

It may include an impression made on wafers or other adhesive substances capable of receiving an impression, or even paper. Pierce v. Indseth, 106 U.S. 546, 1 S.Ct. 418, 27 L. Ed. 254.

CERAGRUM. In old English law. A payment to provide candles in the church. Blount.

CEREVISA. In old English law. Ale or beer.

CERT MONEY. In old English law. Head money or common fine. Money paid yearly by the residents of several manors to the lords thereof, for the certain keeping of the leet, (pro *certo letce;)* and sometimes to the hundred. Blount; 6 Coke, 78; Cowell.

CERTA DEBET ESSE INTENTIO, ET NARRATIO, ET CERTUM FUNDAMENTUM, ET CERTA RES QUIE DEDUCITUR IN JUDICIUM. The design and narration ought to be certain, and the foundation certain, and the matter certain, which is brought into court fo be tried. Co.Litt. 303a.

CERTA RES. In old English law. A certain thing. Fleta, lib. 2, c. 60, §§ 24, 25.

CERTAIN. Ascertained; precise; identified; definitive; clearly known; unambiguous; or, in law, capable of being identified or made known, without liability to mistake or ambiguity, from data already given. Losecco v. Gregory, 108 La. 648, 32 So. 986; White v. Wadhams, 204 Mich. 381, 170 N.W. 60, 62. Not specifically named; indeterminate, indefinite; one or some. Wilhite v. Armstrong, 328 Mo. 1064, 43 S.W.2d 422, 423. Some among possible others, In re Mineral Lac Paint Co., D.C.Pa., 17 F.Supp. 2. That which may be made certain. Brown v. City of Shreveport, La. App., 15 So.2d 234, 236; Singer v. Campbell, 217 Ky. 830, 290 S.W. 667, 668; Civ.Code La. art. 3556; Lee v. Pearson, La.App., 143 So. 516, 518.

CERTAIN SERVICES. In feudal and old English law. Such services as were stinted (limited or defined) in quantity, and could not be exceeded on any pretense; as to pay a stated annual rent, or to plow such a field for three days. 2 Bl.Comm. 61.

CERTAINTY. Absence of doubt. Bennett v. McKrell, Tex.Civ.App., 125 S.W.2d 701, 707.

### In Pleading

Distinctness; clearness of statement; particularity.

Such precision and explicitness in the statement of alleged facts that the pleader's averments and contention may be readily understood by the pleader on the other side, as well as by the court and jury. State v. Burke, 151 Mo. 143, 52 S. W. 226.

This word is technically used in pleading In two different senses, signifying either distinctness, or particularity, as opposed to undue generality.

Certainty is said to be of three sorts : (1) *Certainty to a common intent* is such as is attained by using words in their ordinary meaning, but is not exclusive of another meaning which might be made out by argument or inference. See 2 H.Bla. 530; Andr.Steph.Pl. 384. (2) *Certainty to a certain intent in general* is that which allows of no misunderstanding if a fair and reasonable construction is put upon the language employed, without bringing in facts which are possible, but not apparent. 1 Wms. Saund. 49; Fuller v. Hampton, 5 Conn. 423. (3) *Certainty to a certain intent in particular* is the highest degree of technical accuracy and precision. Co.Litt. 303; 2 H.B1. 530; State v. Parker, 34 Ark. 158, 36 Am.Rep. 5; Lawes, Pl. 54. These definitions, which have been adopted from Coke, have been subjected to severe criticism, but are of some utility in drawing attention to the different degrees of exactness and fulness of statement required in different instances. 13 East, 112; 3 Maule & S. 14; People v. Dunlap, 13 Johns., N.Y., 437.

### In Contracts

The quality of being specific, accurate, and distinct. As to uncertainty of contract, see Davie v. Min. Co., 93 Mich. 491, 53 N.W. 625, 24 L.R.A. 357; Van Schaick v. Van Buren, 70 Hun, 575, 24 N.Y.S. 306.

A thing is certain when its essence, quality, and quantity are described, distinctly set forth, etc. Dig. 12, 1, 6. It is uncertain when the description is not that of an individual object, but designates only the kind. Civ.Code La. art. 3556, par. 7; 5 Coke, 121.

### In Determining Negotiability of Instrument

That is certain which may be rendered certain; a commercial, and not mathematical, certainty. Gerrish v. Atlantic Ice & Coal Co., C.C.A.Ga., 80 F. 2d 648, 650,

CERTIFICANDO DE RECOGNITIONE STAPULIE. In English law. A writ commanding the mayor of the staple to certify to the lord chancellor a statute-staple taken before him where the party himself detains it, and refuses to bring in the same. There is a like writ to certify a statute-merchant, and in divers other cases. Reg.Orig. 148, 151, 152.

CERTIFICATE. A document in use in the English customhouse. No goods can be exported by *certificate,* except foreign goods formerly imported, on which the whole or a part of the customs paid on importation is to be drawn back. Wharton.

A ticket. Hall v. U. S., D.C.Cal., 10 F.Supp. 739, 740.

A warrant. Graham v. State, 123 Tex.Cr.R. 121, 57 S.W.2d 850, 854.

A written assurance, or official representation, that some act has or has not been done, or some event occurred, or some legal formality been complied with.

A written assurance made or issuing from some court, and designed as a notice of things done therein, or as a warrant or authority, to some other court, judge, or officer. People v. Foster, 27 Misc.Rep. 576, 58 N.Y.S. 574; U. S. v. Ambrose, 108 U.S. 336, 2 S.Ct. 682, 27 L. Ed. 746. A statement of some fact in a writing signed by the party certifying. Nowell v. Mayor and Council of Monroe, 177 Ga. 648, 171 S.E. 136, 141. A declaration in writing. Ballen & Friedman v. Bank of Krenlin, 37 Okl. 112, 130 P. 539, 540, 44 L.R.A.,N.S., 621. A "certificate" by a public officer is a statement written and signed, but not necessarily or customarily sworn to, which is by law made evidence of the truth of the facts stated for all or for certain purposes. State v. Abernethy, 190 N.C. 768, 130 S.E. 619, 620.

A writing by which testimony is given that a fact has or has not taken place. Laclede Land & Improvement Co. v. Morten, 183 Mo.App. 637, 167 S.W. 658.

CERTIFICATE FOR COSTS. In English practice. A certificate or memorandum drawn up and signed by the judge before whom a case was tried, setting out certain facts the existence of which must be thus proved before the party is entitled, under the statutes, to recover costs.

CERTIFICATE INTO CHANCERY. In English practice. This is a document containing the opinion of the common-law judges on a question of law submitted to them for their decision by the chancery court.

CERTIFICATE LANDS. In Pennsylvania, in the period succeeding the revolution, lands set apart in the western portion of the state, which might be bought with the certificates which the soldiers of that state in the revolutionary army had received in lieu of pay. Cent. Dict.

CERTIFICATE OF ACKNOWLEDGMENT. The certificate of a notary public, justice of the peace, or other authorized officer, attached to a deed, mortgage, or other instrument, setting forth that the parties thereto personally appeared before him on such a date and acknowledged the instrument to be their free and voluntary act and deed. Read v. Loan Co., 68 Ohio St. 280, 67 N.E. 729, 62 L:R.A. 790. A verification of the act of the maker of an instrument. Thane v. Dallas Joint Stock Land Bank of Dallas, Tex.Civ.App., 129 S.W.2d 795, 799.

CERTIFICATE OF ASSIZE. A writ granted for the re-examination or retrial of a matter passed by assize before justices. Fitzh:Nat.Brev. 181. It is now entirely obsolete. 3 Bla.Comm. 389. Consult, also, Comyns, Dig. *Assize* (B, 27, 28).

CERTIFICATE OF DEPOSIT. A written acknowledgment by a bank or banker of a deposit with promise to pay to depositor, to his order, or to some other person or to his order, Wheelock v. Cantley, 227 Mo.App. 102, 50 S.W.2d 731, 734; Mariland Finance Corporation v. People's Bank of Keyser, 99 W.Va. 230, 128 S.E. 294, 295. A bank's promissory note, Dickenson v. Charles, 173 Va. 393, 4 S.E.2d 351, 353.

Documents showing deposits in building and loan association in form of passbooks or any other appropriate written recital. Alter v. Security Building & Loan Co. of Defiance, 58 Ohio App. 114, 16 N.E.2d 228, 233.

CERTIFICATE OF DONATION. A permit or right granted certificate holder to enter upon land belonging to state to make improvements required by law. Young v. Pumphrey, 191 Ark. 98, 83 S.W. 2d 84, 86.

CERTIFICATE OF EVIDENCE. Practically synonymous with bill of exceptions. Yott v. Yott, 257 Ill. 419, 100 N.E. 902, 903.

CERTIFICATE OF HOLDER OF ATTACHED PROPERTY. A certificate required by statute, in some states, to be given by a third person who is found in possession of property subject to an attachment in the sheriff's hands, setting forth the amount and character of such property and the nature of the defendant's interest in it. Code Civil Proc.N.Y. § 650, Civil Practice Act; § 918.

CERTIFICATE OF INCORPORATION. The instrument by which a private corporation is formed, under general statutes, executed by several persons as incorporators and filed in some designated public office as evidence of corporate existence. This is properly distinguished from a "charter," which is a direct legislative grant of corporate existence and powers to named individuals.

CERTIFICATE OF INDEBTEDNESS. An obligation sometimes issued by corporations having practically the same force and effect as a bond, though not usually secured on any specific property. Christie v. Duluth, 82 Minn. 202, 84 N.W. 754. It may, however, create a lien on all the property of the corporation issuing it, superior to the rights of general creditors. Jefferson Banking Co. v. Trustees of Martin Institute, 146 Ga. 383, 91 S.E. 463, 466.

CERTIFICATE OF INTEREST. An instrument evidencing a fractional or percentage interest in oil and gas production. People v. Sidwell, 27 Cal. 2d 121, 162 P.2d 913, 915.

CERTIFICATE OF OCCUPANCY. A paper certifying that premises complied with provisions of zoning ordinance. Frank J. Durkin Lumber Co. v. Fitzsimmons, 106 N.J.Law, 183, 147 A. 555, 557.

CERTIFICATE OF PREFERRED STOCK. Certificate that person is registered holder of designated number of shares of preferred capital stock. Cring v. Sheller Wood Rim Mfg. Co., 98 Ind.App. 310, 183 N.E. 674, 677.

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY. A license or permit to use highways for stated purposes. Railroad Commission of Texas v. Southwestern Greyhound Lines, Tex.Civ.App., 92 S.W.2d 296, 301, 302.

CERTIFICATE OF PURCHASE. A certificate issued by public officer to successful bidder at a judicial sale (such as a tax sale), which will entitle him to a deed upon confirmation of sale by the court, or (as the case may be) if the land is not redeemed within the time limited. Lightcap v. Bradley, 186 Ill. 510, 58 N.E. 221.

CERTIFICATE OF REGISTRY. In maritime law. A certificate of the registration of a vessel according to the registry acts, for the purpose of giving her a national character. 3 Steph.Comm. 274; 3 Kent, Comm. 139-150.

CERTIFICATE OF SALE. The same as "certificate of purchase," *supra.*

CERTIFICATE OF STOCK. A certificate of a corporation or joint-stock company that named person is owner of designated number of shares of stock. Gibbons v. Mahon, 136 U.S. 549, 10 S.Ct. 1057, 34 L.Ed. 525; Edwards v. Wabash Ry. Co., C.C.A.N.Y., 264 F. 610, 613. A written instrument stating or acknowledging that named person is owner of designated number of shares of stock. It is merely written evidence of ownership of stock, and of the rights and liabilities resulting from such ownership. It is merely a paper representation of an incorporeal right, and stands On the footing similar to that of other muniments o/ title. Whitehead v. Gormley, 116 Okl. 287, 245 P. 562, 565, 47 A.L.R. 171; Misenheimer v. Alexander, 162 N.C. 226, 78 S.E. 161, 164; Home for Destitute Crippled Children v. Boomer, 308 Ill.App, 170, 31 N.E.2d 812, 820; Warren v. New Jersey Zinc Co., N.J.Ch., 116 N.J.Eq. 315, 173 A. 128, 132.

CERTIFICATE SENT TO 1 B. Notation reading "Certificate Sent to 1 B" meant that certificate was to be sent to single beneficiary if war risk insurance application should be accepted. McCormack v. U. S., C.C.A.N.Y., 66 F.2d 519, 521.

CERTIFICATE, TRIAL BY. A mode of trial now little in use; it is resorted to in cases where the fact in issue lies out of the cognizance of the court, and the judges, in order to determine the question, are obliged to rely upon the solemn averment or information of persons in such a station as affords them the clearest and most competent knowledge of the truth. Brown.

CERTIFICATION, In Scotch practice. This is the assurance given to a party of the course to be followed in case he does not appear or obey the order of the court.

CERTIFICATION OF ASSIZE. In English practice. A writ anciently granted for the re-examining or retrial of a matter passed by assize before justices, now entirely superseded by the remedy afforded by means of a new trial. See Certificate of Assize.

CERTIFICATS DE COUTUME. In French law. Certificates given by a foreign lawyer, establishing the law of the country to which he belongs upon one or more fixed points. These certificates can be produced before the French courts, and are received as evidence in suits upon questions of foreign law. Arg.Fr.Merc.Law, 548.

CERTIFIED CARRIERS. Carriers using highways of state to whom certificates of public convenience and necessity have been issued. People v. Henry, 131 Cal.App. 82, 21 P.2d 672.

CERTIFIED CHECK. A depositor's check recognized and accepted by bank officer as valid appropriation of the amount specified and as drawn against funds held by bank.

The usual method of certification is for cashier or teller to write across face of check, over his signature, statement that it is good when properly indorsed. See McAdoo v. Farmers' State Bank of Zenda, 106 Kan. 662, 189 P. 155, 156; Bathgate v. Exchange Bank of Chula, 199 Mo.App. 583, 205 S. W. 875, 876.

The certification of a check is a statement of fact, amounting to an estoppel of the bank to deny liability, Bank of Bay Biscayne v. Ball. 99 Fla. 745, 128 So. 491, 492. A warranty that sufficient funds are on deposit and have been set aside. World Exchange Bank v. Commercial Casualty Ins. Co., 255 N.Y. 1, 173 N.E. 902, 904. It means that bank holds money to pay check and is liable to pay it to proper party. Sundial Const. Co. v. Liberty Bank of Buffalo, 277 N.Y. 137, 13 N.E.2d 745, 746.

CERTIFIED COPY. A copy of a document or record, signed and certified as a true copy by the officer to whose custody the original is intrusted. People v. Foster, 27 Misc. 576, 58 N.Y.Supp. 574; Ehrlich v. Mulligan, 104 N.J.Law, 375, 140 A. 463, 465, 57 A.L.R. 596.

CERTIFIED PUBLIC ACCOUNTANT. A trained accountant who examines the books of accounts of corporations and others and reports upon them.

CERTIFY. To testify in writing; to make known or establish as a fact. Smith v. Smith, Ind.App., 110 N.E. 1013, 1014. To vouch for a thing in writing. State ex inf. Carnahan ex rel. Webb v. Jones, 266 Mo. 191, 181 S.W. 50, 52. To give a certificate, or to make a declaration about a writing. Ainsa v. Mercantile Trust Co. of San Francisco, 174 Cal. 504, 163 P. 898, 901. To warrant. Ettman v. Federal Life Ins. Co., D.C.Mo., 48 F. Supp. 578, 580.

CERTIORARI. Lat. (To be informed of, to be. made certain in regard to.) The name of a writ of review or inquiry. Leonard v. Willcox, 101 Vt. 195, 142 A. 762, 766; Nissen v. International Brotherhood of Teamsters, Chauffeurs, Stablemen & Helpers of America, 229 Iowa 1028, 295 N.W. 858.

Certiorari Is an appellate proceeding for re-examination of action of inferior tribunal or as auxiliary process to enable appellate court to obtain further information in pending cause, Shapleigh Hardware Co. v. Brumfield, 159 Miss. 175, 130 So. 98. A writ directed only to an inferior tribunal, Stewart v. Johnston, C.C.A.Cal., 97 F.2d 548. It is a discretionary writ, Lennon v. School Dist. No. 11, Greer County, 189 Okl. 37, 113 P.2d 382, 384. Issued only for good cause on showing negativing laches in prosecuting appeal, In re Snelgrove, 208 N.C. 670, 182 S.E. 335, 336. It is available for review of official, judicial or quasi judicial actions. State v. Canfield, 166 Minn. 414, 208 N.W. 181; People ex rel. Elmore v. Allman, 382 Ill. 156, 46 N.E.2d 974, 975. It brings into superior court the record of the administrative or inferior judicial tribunal for inspection, Murphy v. Cuesta, Rey & Co., 381 Ill. 162, 45 N.E.2d 26, 28. It lies as a substitute for an appeal, Pue v. Hood, 222 N.C. 310, 22 S.E.2d 896, 898. To correct errors of law, Dube v. Mayor of City of Fall River, 308 Mass. 12, 30 N.E.2d 817, 818; to restrain excesses of jurisdiction, Stacy v. Mayor of City of Haverhill, 317 Mass. 188, 57 N.E.2d 564. To review erroneous or unwarranted acts or proceedings, State ex rel. Allen v. Rose, 123 Fla. 544, 167 So. 21, 24. To review questions of law, Public Welfare Commission v. Civil Service Commission, 289 Mich. 101, 286 N.W. 173, 175. Where circumstances are so exceptional that an immediate review is in interest of justice, Vingi v. Read, 68 R.I. 484, 29 A.2d 637, 639; where judgment is a miscarriage of justice or will result in substantial injury to legal rights, Goodkind v. Wolkowsky, 151 Fla. 62, 9 So.2d 553, 562; or where applicant for writ lost right of appeal through no fault of his own, McCain v. Collins, 204 Ark. 521, 164 S.W.2d 448, 451. It lies to determine whether inferior tribunal acted within or abused or exceeded jurisdiction, Brundage v. O' Berry, 101 Fla. 320, 134 So. 520, 521; Pierce v. Green, 229 Iowa 22, 294 N.W. 237, 253, 131 A.L.R. 335; or proceeded illegally, Board of Zoning Appeals of City of Indianapolis v. Waintrup, 99 Ind.App. 576, 193 N.E. 701, 705; or proceeded regularly, In re Revocation of Restaurant

Liquor License No. R-8981, Issued to John Mami, 144 Pa.Super. 285, 19 A.2d 549, 552; or whether judgment is prejudicial and materially harmful, Jacksonville American Pub. Co. v. Jacksonville Paper Co., 143 Fla. 835, 197 So. 672, 674. It performs the office of the common-law writ of error, Berry v. Recorder's Court of West Orange, 124 N.J.L. 385, 11 A.2d 743, 745. Limited review only is involved in the writ, Brundage v. O'Berry, 101 Fla. 320, 134 So. 520, 521. Quashal of record or proceeding is the only relief available, State ex rel. St. Louis County v. Evans, 346 Mo. 209, 139 S.W.2d 967, 969.

Originally, and in English practice, an original writ commanding judges or officers of inferior courts to certify or to return records or proceedings in a cause for judicial review of their action. Jacob; Ashworth v. Hatcher, 98 W.Va. 323, 128 S.E. 93. For other common-law definitions, see F. N. B. 554 A; Bac.Abr. 162, 168, citing 4 Burr. 2244; In re Dance, 2 N. D. 184, 49 N.W. 733, 33 Am.St.Rep. 768.

In Florida the writs of "certiorari" in use are the common-law writs, the statutory writ to review judgments of civil courts of record, the rule certiorari to review interlocutory appeals in equity, the rule certiorari for supplying omitted parts of records on appeals or writs of error, and writs of certiorari issued to review quasi judicial judgments or orders of quasi judicial bodies or officers. Kilgore v. Bird, 149 Fla. 570, 6 So.2d 541, 544, 545.

In Massachusetts it is a writ by the supreme judicial court commanding inferior tribunal to certify and return its records in a particular case that any errors or irregularities which appear in the proceedings may be corrected. Pub.St.Mass.1882, p. 1288; Coolidge v. Bruce, 249 Mass. 465, 144 N.E. 397.

In Texas, the ordinary office of writ of "certiorari" is to perfect the record on appeal. Rev.St.1925, art. 932. Zamora v. Garza, Tex.Civ.App., 117 S.W.2d 165.

In somes states the writ has been abolished by statute so far as the common-law name is concerned, but the remedy is preserved under the new name of "writ of review" ; Southwestern Telegraph & Telephone Co. v. Robinson, Tex., 1 C.C.A. 91, 48 F. 771.

CERTIORARI, BILL OF. In English chancery practice. An original bill praying relief. It was filed for the purpose of removing a suit pending in some inferior court of equity into the court of chancery, on account of some alleged incompetency or inconvenience.

CERTIORARI FACIAS. Cause to be certified. The command of a writ of certiorari.

CERTUM EST QUOD CERTUM REDDI POTEST. That is certain which can be rendered certain. Co.Litt. 45 b, 96 a, 142 a; 2 Bla.Comm. 143;' 2 M. & S. 50; 3 Term 463; 3 M. & K. 353; President, etc., of Lechmere Bank v. Boynton, 11 Cush., Mass., 380.

CERURA. A mound, fence, or inclosure.

CERVISARII. In Saxon law. Tenants who were bound to supply drink for their lord's table. Cowell.

CERVISIA. Ale, or beer. Sometimes spelled *"cerevisia."*

CERVISIARIUS. In old records. An alehouse keeper. A beer or ale brewer. Blount; Cowell.

CERVUS. Lat. A stag or deer.

CESAREVITCH, CESAREWITCH. Originally, a title introduced in Russia in 1799 by Paul I (1754-1801) for his second son, the Grand Duke Constantine. Afterward the title of the czar's eldest son, or the heir apparent to the Russian throne. 6 New Internatl.Encyc. 420.

CESAREVNA. In Imperial Russia, the title of the wife of the cesarevitch, or heir apparent. 6 New Internatl.Encyc. 420.

CESIONARIO. In Spanish law. An assignee. White, New Recop. b. 3, tit. 10, c. 1, § 3.

CESS, v. In old English law. To cease, stop, determine, fail.

CESS, n. An assessment or tax. In Ireland, it was anciently applied to an exaction of victuals, at a certain rate, for soldiers in garrison.

CESSA REGNARE, SI NON VIS JUDICARE. Cease to reign, if you wish not to adjudicate. Hob. 155.

CESSANTE CAUSA, CESSAT EFFECTUS. The cause ceasing, the effect ceases. Broom, Max. 160; 1 Exch. 430.

CESSANTE RATIONE LEGIS, CESSAT ET IPSA LEX. The reason of the law ceasing, *the* law itself also ceases. Broom, Max. 159; 4 Co. 38; Appeal of Cummings, 11 Pa. 273; Nice's Appeal, 54 Pa. 201. See Dig. 35, 1, 72, 6.

CESSANTE STATU PRIMITIVO, CESSAT DERIVATIVUS. When the primitive or original estate determines, the derivative estate determines also. 8 Coke, 34; Broom, Max. 495; 4 Kent 32.

CESSARE. L. Lat. To cease, stop, or stay.

CESSAVIT PER BIENNIUM. In practice. An obsolete writ, which could formerly have been sued out when the defendant had for two years *ceased* or neglected to perform such service or to pay such rent as he was bound to do by his tenure, and had not upon his lands sufficient goods or chattels to be distrained. Fitzh.Nat.Brev. 208. It also lay where a religious house held lands on condition of performing certain spiritual services which it failed to do. 3 Bl.Comm. 232. Emig v. Cunningham, 62 Md. 460.

CESSE. (1) An assessment or tax; (2) a tenant of land was said to *cesse* when he neglected or *ceased* to perform the services due to the lord. Co.Litt. 373a, 380b.

CESSER. Neglect; a ceasing from, or omission to do, a thing. 3 Bl.Comm. 232. The determination of an estate. 1 Coke, 84; 4 Kent, Comm. 33, 90, 105, 295. The determination or ending of a term, annuity, etc. Sweet.

As to the cesser clause in a charter party, see Steamship Rutherglen Co. v. Howard Houlder & Partners, N.Y., 122 C.C.A. 166, 203 F. 848; The Marpesia, C.C.A.N.Y., 292 F. 957, 973.

CESSER, PROVISO FOR. A provision in a settlement creating long terms that when the trusts are satisfied, the term should cease and determine. Sweet. This proviso generally expresses three events: (1) The trusts never arising; (2) their

becoming unnecessary or incapable of taking effect; (3) the performance of them. Sugd.Vend. (14th Ed.) 621-623.

CESSET EXECUTIO. (Let execution stay.) In practice. A stay of execution; or an order for such stay; the entry of such stay on record. 2 Tidd, Pr. 1104.

CESSET PROCESSUS. (Let process stay.) A stay of proceedings entered on the record. See 2 Dougl. 627; 11 Mod. 231. Formal order for stay of process or proceedings, Brooks v. Super Service, 183 Miss. 833, 183 So. 484.

CESSIO. Lat. A cession; a giving up, or relinquishment; a surrender; an assignment.

CESSIO BONORUM. In Roman law. Cession of goods. A surrender, relinquishment, or assignment of all his property and effects made by an insolvent debtor for the benefit of his creditors. The term is commonly employed in modern continental jurisprudence to designate a bankrupt's assignment of property to be distributed among his creditors, and is used in the same sense by some English and American writers, but here rather as a convenient than as a strictly technical term. See 2 Bl.Comm. 473; Dig. 2, 4, 25; 48, 19, 1; Nov. 4. 3; La.Civ.Code art. 2166 (Civ.Code, art. 2170) ; Sturges v. Crowninshield, 4 Wheat, .122, 4 L.Ed. 529.

CESSIO IN JURE. In Roman law. A fictitious suit, in which the person who was to acquire the thing claimed *(vindicabat)* the thing as his own, the person who was to transfer it acknowledged the justice of the claim, and the magistrate pronounced it to be the property *(addicebat)* of the claimant. Sandars' Just.Inst., 5th Ed., 89, 122.

CESSION. The act of ceding; a yielding or giving up; surrender; relinquishment of property or rights.

In the Civil Law

An assignment. The act by which a party transfers property to another. The surrender or assignment of property for the benefit of one's creditors. See Cessio Bonorum.

In Ecclesiastical Law

A giving up or vacating a benefice, by accepting another without a proper dispensation. 1 Bl. Comm. 392; Latch. 234; Cowell.

In Public Law

The assignment, transfer, or yielding up of territory by one state or government to another. Municipality of Ponce v. Church, 210 U.S. 310, 28 S.Ct. 737, 52 L.Ed. 1068.

CESSION DES BIENS. In French law. The voluntary or compulsory surrender which a debtor in insolvent circumstances makes of all his goods to his creditors.

CESSION OF GOODS. The surrender of property; the relinquishment that a debtor makes of all his property to his creditors, when he finds himself unable to pay his debts. Civil Code La. art. 2170.

CESSIONARY. In Scotch law. An assignee. Bell.

CESSIONARY BANKRUPT. One who gives up his estate to be divided among his creditors.

CESSMENT. An assessment, or tax.

CESSOR. One who ceases or neglects so long to perform a duty that he thereby incurs the danger of the law. 0. N. B. 136.

CESSURE. L. Fr. A receiver; a bailiff. Kelham.

C'EST ASCAVOIR. L. Fr. That *is* to say, or to-wit. Generally written as one word, *cestascavoir, cestascavoire.*

C'EST LE CRIME QUI FAIT LA HONTE, ET NON PAS L'RCHAFAUD. Fr. It is the offense which causes the shame, and not the scaffold.

CESTUI, CESTUY. He. Used frequently in composition in law French phrases.

CESTUI QUE TRUST. He who has a right to a beneficial interest in and out of an estate the legal title to which is vested in another. 2 Washb. Real Prop. 163. The person who possesses the equitable right to property and receives the rents, issues, and profits thereof, the legal estate of which is vested in a trustee. Bernardsville Methodist Episcopal Church v. Seney, 85 N.J.Eq. 271, 96 A. 388, 389; Moore v. Shifflett, 187 Ky. 7, 216 S.W. 614, 616. Beneficiary of trust, Ulmer v. Fulton, 129 Ohio St. 323, 195 N.E. 557, 564, 97 A.L.R. 1170.

CESTUI QUE USE. He for whose use and benefit lands or tenements are held by another. The *cestui que use* has the right to receive the profits and benefits of the estate, but the legal title and possession (as well as the duty of defending the same) reside in the other. 2 Bla.Comm. 330; 2 Washb. Real Prop. 95.

CESTUI QUE VIE. He whose life is the measure of the duration of an estate. 1 Washb. Real Prop. 88. The person for whose life any lands, tenements, or hereditaments are held.

CESTUY QUE DOIT INHERITER AL PERE DOIT INHERITER AL FILS. He who would have been heir to the father of the deceased shall also be heir of the son. Fitzh. Abr. "Descent," 2; 2 Bl. Comm. 239, 250.

CF. An abbreviated form of the Latin word *confer,* meaning "compare." Directs the reader's attention to another part of the work, to another volume, case, etc., where contrasted, analogous, or explanatory views or statements may be found.

CH. This abbreviation most commonly stands for "chapter," or "chancellor," but it may also mean "chancery," or "chief."

CHACE. L. Fr. A chase or hunting ground.

CHACEA. In old English law. A station of game, more extended than a park, and less than a forest; also the liberty of chasing or hunting within a certain district; also the way through which cattle are driven to pasture, otherwise called a "droveway." Blount.

CHACEA EST AD COMMUNEM LEGEM. A chase is by common law. Reg.Brev. 806.

CHACEABLE. L. Fr. That may be chased or hunted.

CHACER. L. Fr. To drive, compel, or oblige; also to chase or hunt.

CHACURUS. L. Lat. A horse for the chase, or a hound, dog, or courser.

CHAFEWAX. An officer in the English chancery whose duty was to prepare wax to seal the writs, commissions, and other instruments thence issuing. The office was abolished by St. 15 & 16 Viet. c. 87, § 23.

CHAFFERS. An ancient term for goods, wares, and merchandise; hence the word *chaffering*, which is yet used for buying and selling, or beating down the price of an article. The word is used in Stat. 3 Edw. III. c. 4.

CHAFFERY. Traffic; the practice of buying and selling.

CHAIN. A measure used by engineers and surveyors, being twenty-two yards in length.

CHAIN OF TITLE. Successive conveyances, or other forms of alienation, affecting a particular parcel of land, arranged consecutively, from the government or original source of title down to the present holder. Capper v. Poulsen, 321 Ill. 480, 152 N.E. 587, 588; Maturi v. Fay, 96 N.J.Eq. 472, 126 A. 170, 173; Havis v. Thorne Inv. Co., Tex.Civ. App., 46 S.W.2d 329, 332.

CHAIN STORE. A store in a group of stores, one or more of which is located within the state, under the same management, supervision, or ownership. Lee v. Herndon, 151 Fla. 657, 10 So.2d 305, 306.

CHAIRMAN. A name given to the presiding officer of an assembly, public meeting, convention, deliberative or legislative body, board of directors, committee, etc.

CHAIRMAN OF COMMITTEES OF THE WHOLE HOUSE. In English parliamentary practice. In the commons, this officer, always a member, is elected by the house on the assembling of every new parliament. When the house is in committee on bills introduced by the government, or in committee of ways and means, or supply, or in committee to consider preliminary resolutions, it is his duty to preside.

CHALDRON, CHALDERN, or CHALDER. Twelve sacks of coals, each holding three bushels, weighing about a ton and a half. In Wales they reckon 12 barrels or pitchers a ton or chaldron, and 29 cwt. of 120 lbs. to the ton. Wharton.

A measure of capacity, equal to fifty-eight and two-thirds cubic feet, nearly. Cowell.

CHALLENGE, v. To object or except to; to prefer objections to a person, right, or instrument; to formally call into question the capability of a person for a particular function, or the existence of a right claimed, or the sufficiency or validity of an instrument; to call or put in question; to put into dispute; to render doubtful.

CHALLENGE, n. A request by one person to another to fight a duel. Ivey v. State, 12 Ala. 276; Hawk.P1.Cr. b. 1, c. 3, § 3; State v. Farrier, 8 N.C. 487; 2 Bish.Cr.Law, § 312.

An objection or exception.

The objection or exception may be:

1. Against a person who presents himself at the polls as a voter, in order that his right to cast a ballot may be inquired into.

2. Against legal documents, as a declaration, count, or writ. But this use of the word is now obsolescent. See, however, Adkins v. Wayne County Court, 94 W.Va. 460, 119 S.E. 284, 285.

3. Taken to the personal qualification of a judge or magistrate about to preside at the trial of a cause; as on account of personal interest, his having been of counsel, bias, etc. See Bank of North America v. Fitzsimons, 2 Binn., Pa., 454; Pearce v. Affieck, 4 *id.* 349.

4. Taken to the jurors summoned and returned for the trial of a cause, People *v.* Travers, 88 Cal. 233, 26 P. 88. See 2 Poll. & Maitl. 619, 646; Co.Litt. 155b.

*Challenge for Cause*

A challenge to a juror for which some cause or reason is alleged. Termes de la Ley; Bl.Comm. 353. Thus distinguished from a peremptory challenge. Turner v. State, 114 Ga. 421, 40 S.E. 308; Cr. Code N. Y. § 374.

*Challenge Propter Affectum*

A challenge on account of bias or partiality or prejudice. State v. Sawtelle, 66 N.H. 488, 32 A. 831.

*Challenge Propter Defectum*

A challenge on account of some legal disqualification, such as infancy or alienage.

*Challenge Propter Delictum*

A challenge on account of crime; that is, disqualification arising from the conviction of an infamous crime. Co.Litt. 155 *b et seq.;* State v. Levy, 187 N.C. 581, 122 S.E. 386, 389.

*Challenge Propter Honoris Respectum*

A challenge on account of party's social rank.

*Challenge to the Array*

An exception to the whole panel in which the jury are *arrayed*, or set in order by the sheriff in his return, upon account of partiality, or some default in the sheriff, coroner, or other officer who arrayed the panel or made the return. 3 Bl.Comm. 359; Co.Litt. 155b; Moore v. Guano Co., 130 N.C. 229, 41 S.E. 293; Durrah v. State, 44 Miss. 789. A challenge to the form and manner of making up the panel. Cobb v. Atlanta Coach Co., 46 Ga.App. 633, 168 S.E. 126, 127. A challenge that goes to illegality of drawing, selecting, or impaneling array. Lake v. State, 100 Fla. 386, 129 So. 833, 834.

*Challenge to the Favor*

A challenge based on circumstances of suspicion, as acquaintance, and the like. 3 Bl.Comm. 363; 4 Bl.Comm. 353; State v. Sawtelle, 66 N.H. 488, 32 A. 831; Cobb v. Atlanta Coach Co., 46 Ga.App. 633, 168 S.E. 126, 127.

*Challenge to the Panel*

The same as a challenge to the array, supra. See Pen. Code Cal. § 1058; Pate v. State, 15 Okl.Cr. 90, 175 P. 122, 123.

*Challenge to the Poll*

A challenge made to an individual juror. State v. Carlin°, 99 N.J.Law, 292, 122 A. 830, 831; Cobb v. Atlanta Coach Co., 46 Ga.App. 633, 168 S.E. 126, 127.

*General Challenge*

A species of challenge for cause, being an objection to a particular juror, to the effect that the juror is disqualified from serving in any case. Pen. Code Cal. § 1071.

*Peremptory Challenge*

In criminal practice. A species of challenge which the prosecution or the prisoner is allowed to have against a certain number of jurors, without assigning any cause. Lewis v. U. S., 146 U.S. 370, 13 S.Ct. 136, 36 L.Ed. 1011; Turpin v. state, 55 Md. 462; Leary v. Railway Co., 69 N.J.Law, 67, 54 A. 527.

*Principal Challenge*

A challenge of a juror for a cause which carries with it, *prima facie,* evident marks of suspicion either of malice or favor ; as that a juror is of kin to either party within the ninth degree; that he has an interest in the cause, etc. 3 B1.Comm. 363. A species of challenge to the array made on account of partiality or some default in the sheriff or his under-officer who arrayed the panel. 4 Bla.Comm. 353; Co.Litt. 156 a, *b.* A challenge based on alleged facts from which, if proven to be true, incapacity to serve is conclusively presumed. Cobb v. Atlanta Coach Co., 46 Ga.App. 633, 168 S.E. 126, 127. A challenge for principal cause, Butler v. Greensboro Fire Ins. Co., 196 N.C. 203, 145 S.E. 3, 4.

CHALLENGE TO FIGHT. A summons or invitation, given by one person to another, to engage in a personal combat; a request to fight a duel. A criminal offense. See Steph.Crim.Dig. 40; 3 East, 581; State v. Perkins, 6 Blackf.Ind. 20.

CHAMBER. A room or apartment in a house. A private repository of money; a treasury. A compartment; a hollow or cavity. Proudfit Loose Leaf Co. v. Kalamazoo Loose Leaf Binder Co., C.C.A.Mich., 230 F. 120, 131. Also used to designate a court, a commission, or an association of persons habitually meeting together in an apartment, e. *g.,* the "star chamber," "chamber of deputies," "chamber of commerce."

CHAMBER BUSINESS. A term applied to all such judicial business as may properly be transacted by a judge at his chambers or elsewhere, as distinguished from such as must be done by the court in session. In re Neagle, C.C.Cal., 39 Fed. 855, 5 L.R.A. 78.

CHAMBER OF ACCOUNTS. In French law. A sovereign court, of great antiquity, in France, which took cognizance of and registered the accounts of the king's revenue; nearly the same as the English court of exchequer. Enc. Brit.

CHAMBER OF COMMERCE. An association (which may or may not be incorporated) comprising the principal merchants, manufacturers, and traders of a city, designed for convenience in buying, selling and exchanging goods, and to foster the commercial and industrial interests of the place. Similar societies are known by various names, as, Board of Trade, etc. A board or association to promote the commercial interests of a locality, county, or the like, or a society of a city who meet to promote the general trade and commerce of the place. Retailers Credit Ass'n of Alameda County v. Commissioner of Internal Revenue, C.C.A.9, 90 F.2d 47, 51, 111 A.L.R. 152.

CHAMBER SURVEYS. In Pennsylvania, false and fraudulent pretenses of surveys of public lands by' surveyors. Schraeder Min. & Mfg. Co. v. Packer, 129 U.S. 688, 9 S.Ct. 385, 32 L.Ed. 760.

CHAMBER, WIDOW'S. A portion of the effects of a deceased person, reserved for the use of his widow, and consisting of her apparel, and the furniture of her bed-chamber, is called in London the "widow's chamber." 2 Bl.Comm. 518.

This custom in London of reserving her apparel and furniture for the widow of a freeman was abolished by 19 & 20 Vict. c. 94.

CHAMBERDEKINS, or CHAMBER DEACONS. In old English Jaw. Certain poor Irish scholars, clothed in mean habit, and living under no rule; also beggars banished from England. 1 Hen. V. cc. 7, 8. Wharton.

CHAMBERLAIN. Keeper of the chamber. Originally the chamberlain was the keeper of the treasure chamber *(camera)* of the prince or state; otherwise called "treasurer." Cowell.

The name of several high officers of state in England, as the lord great chamberlain of England, lord chamberlain of the household, chamberlain of the exchequer. Cowell; Blount.

The word is also used in some American cities as the title of an officer corresponding to "treasurer."

CHAMBERLARIA. Chamberlainship; the office of a chamberlain. Cowell.

CHAMBERS.

In Practice

The private room or office of a judge; any place in which a judge hears motions, signs papers, or does other business pertaining to his office, when he is not holding a session of court. Business so transacted is said to be done "in chambers." Quoted with approval in Chapman v. Chattooga Oil-Mill Co., 22 Ga.App. 446, 96 S.E. 579, 580. See, also, Atchison, T. & S. F. Ry. Co. v. Long, 122 Okl. 86, 251 P. 486, 491; Hoskins v. Baxter, 64 Minn. 226, 66 N.W. 969; In re Verdigris Conservancy Dist., 131 Kan. 214, 289 P. 966, 968. The term is also applied, in England, to the private office of a barrister.

In International Law

Portions of the sea cut off by lines drawn from one promontory to another, or included within lines extending from the point of one cape to the next, situate on the sea-coast of the same nation, and which are claimed by that nation as asylums for merchant vessels, and exempt from the operations of belligerents.

CHAMBERS OF THE KING. See King's Chambers.

CHAMBIUM. In old English law. Change, or exchange. Bract. fols. 117, 118.

CHAMBRE DEPEINTE. A name anciently given to St. Edward's chamber, called the "Painted Chamber," destroyed by fire with the houses of parliament.

CHAMFER. A small gutter, furrow, or groove; the slope or bevel produced by cutting off the edge of anything which was originally right angled. Syracuse Chilled Plow Co. v. Robinson, C.C.N.Y., 35 F. 502, 503.

CHAMOTTE. A clay which has been burned to an extent which deprives it of further shrinkage on being again subjected to heat. Panzl v. Battle Island Paper & Pulp Co., D.C.N.Y., 132 F. 607, 609. As used in the arts, see Id., C.C.A.N.Y., 138 F. 48, 50.

CHAMP DE MAI. (Lat. *Campus Maii.)* The field or assembly of May. The national assembly of the Franks, held in the month of May.

CHAMP DE MARS. (Lat. *Campus Martii.)* The field or assembly of March. The national assembly of the Franks, held in the month of March, in the open air.

CHAMPART. In French law. The grant of a piece of land by the owner to another, on condition that the latter would deliver to him a portion of the crops. 18 Toullier, n. 182.

CHAMPERT.

In old English law. A share or division of land; champerty.

In old Scotch law. A gift or bribe, taken by any great man or judge from any person, for delay of just actions, or furthering of wrongous actions, whether it be lands or any goods movable. Skene.

CHAMPERTOR. In criminal law. One who makes or brings pleas or suits, or causes them to be moved or brought, either directly or indirectly, and sues them at his proper costs, upon condition of having a part of the gains or of the land in dispute. One guilty of champerty. St. 33 Edw. I, c. 2; In re Aldrich, 86 Vt. 531, 86 A. 801, 802.

CHAMPERTOUS. Of the nature of champerty; affected with champerty.

The conveyance of land which is in the adverse possession of another is "champertous". Reynolds v. Thomas Forman Co., 295 Ky. 41, 174 S.W.2d 132, 134.

CHAMPERTY. A bargain by a stranger with a party to a suit, by which such third person undertakes to carry on the litigation at his own cost and risk, in consideration of receiving, if successful, a part of the proceeds or subject sought to be recovered. Small v. Mott, 22 Wend., N.Y., 405; Gilman v. Jones, 87 Ala. 691, 5 So. 785, 7 So. 48, 4 L.R.A. 113; Jamison Coal & Coke Co. v. Goltra, C.C.A.Mo., 143 F.2d 889, 895, 154 A.L.R. 1191. An agreement between owner of claim and volunteer that latter may collect claim at his own expense and divide proceeds. Gibson v. Gillespie, 4 W.W. Harr. (Del.) 331, 152 A. 589, 593.

The purchase of an interest in a thing in dispute, with the object of maintaining and taking part in the litigation. 7 Bing. 378.

"Maintenance" consists in maintaining, supporting, or promoting the litigation of another. "Champerty" is a bargain to divide the proceeds of litigation between the owner of the liquidated claim and a party supporting or enforcing the litigation. Draper v. Lebec, 219 Ind. 362, 37 N.E.2d 952, 956.

CHAMPION. A person who fights a combat in his own cause, or in place of another. The person who, in the trial by battel, fought either for the tenant or demandant. 3 Bl.Comm. 339; Bracton, 1. 4, t. 2, c. 12.

A person who engages in any contest; a combatant; a fighter; one who acts or speaks in behalf of a person, or a cause; defender; an advocate. Egan v. Signal Pub. Co., 140 La. 1069, 74 So. 556, 558.

CHAMPION OF THE KING OR QUEEN. An ancient officer, whose duty it was at the coronation to challenge "that, if any man shall deny the king's title to the crown, he is there ready to defend it in single combat." Wharton.

CHANCE. Absence of explainable or controllable causation; accident; fortuity; hazard; result or issue of uncertain and unknown conditions or forces; risk; unexpected, unforeseen, or unintended consequence of an act. The opposite of intention, design, or contrivance.

But it has been held that there is a wide difference between *chance* and *accident.* Harless v. U. S., Morris, Iowa, 169, 173.

CHANCE BARGAIN. The entering into a contract for better or worse, accompanied by the taking of chances as to the true facts and situation of the thing or article bargained about. Marr v. Lawson, 290 Ky. 342, 161 S.W.2d 42, 44.

CHANCE-MEDLEY. In criminal law. A sudden affray. This word is sometimes applied to any kind of homicide by misadventure, but in strictness it is applicable to such killing only as happens in defending one's self. 4 Bl.Comm. 184.

CHANCE VERDICT. See Verdict.

CHANCEL. In ecclesiastical law. The part of a church in which the communion table stands; it belongs to the rector or the impropriator. 2 Broom & H. Comm. 420.

CHANCELLOR. In American law, this is the name given in some states to the judge (or the presiding judge) of a court of chancery.

In England, besides being the designation of the chief judge of the court of chancery, the term is used as the title of several judicial officers attached to bishops or other high dignitaries and to the universities. The title is also used in some of the dioceses of the Protestant Episcopal Church in the United States to designate a member of the legal profession who gives advice and counsel to the bishop and other ecclesiastical authorities.

In Scotland, this title is given to the foreman of an assize or jury. Bisph.Eq. 7.

An officer bearing this title is to be found in some countries of Europe, and is generally invested with extensive political authority.

*Chancellor of a Cathedral*

In English ecclesiastical law. One of the *qucrtuor personce,* or four chief dignitaries of the cathedrals of the old foundation.

*Chancellor of a Diocese*

In ecclesiastical law, the officer appointed to assist a bishop in matters of law, and to hold his consistory courts for him. 1 Bl.Comm. 382; 2 Steph.Comm. 672.

*Chancellor of a University*

In English law. The official head of a university.

*Chancellor of the Duchy of Lancaster*

In English law. An officer before whom, or his deputy, the court of the duchy chamber of Lancaster is held. Hob. 77; 3 Bl.Comm. 78.

*Chancellor of the Exchequer*

In English law. A high officer of the crown, who formerly sat in the exchequer court. Cowell. In modern times his duties are such as pertain to a minister of state charged with the management of the national revenue and expenditure. 2 Steph.Com. 467.

*Chancellor of the Order of the Garter and Other Military Orders*

In England, an officer who seals the commissions and the mandates of the chapter and assembly of the knights, keeps the register of their proceedings, and delivers their acts under the seal of their order.

*Chancellor, the Lord high*

In England, the highest judicial functionary in the kingdom.

He exercises many functions and powers over and above the jurisdiction which he exercises in his judicial capacity in the supreme court of judicature, of which he is the head. Wharton.

*Vice-Chancellor*

In English law. A judge of the court of chancery, acting as assistant to the lord chancellor, and holding a separate court. 3 Steph.Comm. 418.

CHANCELLOR'S COURTS IN THE TWO UNIVERSITIES. In English law. Courts of local jurisdiction, resembling borough courts, in and for the two universities of Oxford and Cambridge in England. 3 Bl.Comm. 83; Odgers, C.L. 1030; 12 East, 12; 13 East, 635; 15 East, 634; 10 Q.B. 292.

CHANCER. To adjust according to principles of equity, as would be done by a court of chancery. Cent. Dict.

The practice arose in parts of New England when the courts, without equity jurisdiction, were compelled to act upon equitable principles. See Lewiston v. Gagne, 89 Me. 395, 36 A. 629, 56 Am.St.Rep. 432; In re Appel, Mass., 90 C.C.A. 172, 163 F. 1002, 20 L.R.A.,N.S., 76.

CHANCERY. Equity; equitable jurisdiction; a court of equity; the system of jurisprudence administered in courts of equity. Kenyon v. Kenyon, 3 Utah, 431, 24 P. 829. See Court of Chancery.

CHANGE. As a noun. An alteration; a modification or addition; substitution of one thing for another. Exchange of money against money of a different denomination. Also small coin. Also an abbreviation of *exchange*.

As a verb. Alter; cause to pass from one place to another; exchange; make different; put one thing in place of another; vacate.

CHANGE OF BENEFICIARY. A divesting of beneficial interest held by one person and a vesting of that interest in another. Goldman v. Moses, 287 Mass. 393, 191 N.E. 873, 874.

CHANGE OF DOMICILE. Change of abode or residence and intention to remain. In re Fischer's Estate, 151 Misc. 74, 271 N.Y.S. 101. Shenton v. Abbott, 178 Md. 526, 15 A.2d 906, 908, 909.

CHANGE OF GRADE. Usually understood as an elevation or depression of the surface of a street, or a change of the natural contour of its' face so as to facilitate travel over it. McCabe v. City of New York, 155 App.Div. 262. 140 N.Y.S. 127. 131.

It is essential that there shall have been a previously established grade and that a new grade be physically made. Gas Engine & Power Co. v. City of New York, 166 App.Div. 297, 151 N.Y.S. 310, 313; Berglar v. University City, Mo.App., 190 S.W. 620, 623.

CHANGE OF LOCATION. Removal from old to new location. Weber County v. Ritchie, 98 Utah 272, 96 P.2d 744.

CHANGE OF VENUE. Properly speaking, the removal of a suit begun in one county or district to another county or district for trial, though the term is also sometimes applied to the removal of a suit from one court to another court of the same county or district. Felts v. Railroad Co., 195 Pa. 21, 45 A. 493; State v. Wofford, 119 Mo. 375, 24 S. W. 764.

CHANGER. An officer formerly belonging to the king's mint, in England, whose business was chiefly to *exchange* coin for bullion brought in by merchants and others.

CHANNEL. The bed in which the main stream of a river flows, rather than the deep water of the stream as followed in navigation. Bridge Co. v. Dubuque County, 55 Iowa, 558, 8 N.W. 443. See The Oliver, D.C.Va., 22 F. 849; Iowa v. Illinois, 147 U.S. 1, 13 S.Ct. 239, 37 L.Ed. 55.

But the term is sometimes used to designate the customary and traveled fairway. The Arlington, C.C.A.N.Y., 19 F.2d 285, 286, 54 A.L.R. 101. It may also be used as a generic term applicable to any water course, whether a river, creek, slough, or canal. McKissick Cattle Co. *v.* Alsaga, 41 Cal.App. 380, 182 P. 793, 797. The "channel" of a river is to be distinguished from a "branch." U. S. v. Hutchings, D.C.Okl., 252 F. 841, 844.

Main Channel

That bed of the river over which the principal volume of water flows. St. Louis & St. P. Packet Co. V. Keokuk & H. Bridge Co., C.C.Iowa, 31 F. 757. Compare State of Oklahoma v. State of Texas, 258 U.S. 574, 42 S.Ct. 406, 414, 66 L.Ed. 771.

The main channel of a navigable stream, called for as a boundary between states, means the "thalweg," or deepest and most navigable channel as it then existed. Whiteside v. Norton, C.C.A.Minn., 205 F. 5, 9.

Natural Channel

The channel of a stream as determined by the natural conformation of the country through which it flows. See Larrabee v. Cloverdale, 131 Cal. 96, 63 P. 143. The floor or bed on which the water flows, and the banks on each side thereof as carved out by natural causes. Pima Farms Co. v. Proctor, 30 Ariz. 96, 245 P. 369, 372.

CHANTER. The chief singer in the choir of a cathedral. Mentioned in 13 Eliz. c. 10.

CHANTRY. A church or chapel endowed with lands for the maintenance of priests to say mass daily for the souls of the donors. Termes de la Ley; Cowell.

CHAPEL. A place of worship; a lesser or inferior church, sometimes a part of or subordinate to another church. Webster. Rex v. Nixon, 7 Car. & P. 442; In re Atkinson's Will, 120 Misc. 186, 197 N.Y.S. 831, 832.

Chapel of Ease

In English ecclesiastical law. A chapel built in aid of original church for parishioners who had fixed their residence at some distance. 3 Steph. Comm. 151.

Free Chapels

So called from their freedom or exemption from all ordinary jurisdiction.

Private Chapels

Chapels owned by private persons, and used by themselves and their families. 2 Steph.Comm. 745.

Proprietary Chapels

In English law. Those belonging to private persons who have purchased or erected them with a view to profit or otherwise.

Public Chapels

In English law, chapels founded later than the church for parishioners who fixed their residence at a distance; and chapels so circumstanced were described as "chapels of ease." 3 Steph.Comm. (7th Ed.) 745.

CHAPELRY. The precinct and limits of a chapel. The same thing to a chapel as a parish is to a church. Cowell; Blount; Termes de la Ley.

CHAPERON. A hood or bonnet anciently worn by the Knights of the Garter; also a little escutcheon fixed in the forehead of horses drawing a hearse at a funeral. Wharton.

CHAPITRE. A summary of matters to be inquired of or presented before justices in eyre, justices of assise, or of the' peace, in their sessions. Also articles delivered by the justice in his charge to the inquest. Brit. c. iii.

CHAPLAIN. An ecclesiastic who performs divine service in a chapel; but it more commonly means one who attends upon a king, prince, or other person of quality, for the performance of clerical duties in a private chapel. 4 Coke, 90. A clergyman officially attached to a ship of war, to an army, (or regiment,) or to some public institution, for the purpose of performing divine service. Webster.

CHAPMAN. An itinerant vendor of small wares. A trader who trades from place to place. Say. 191, 192.

CHAPTER. In ecclesiastical law. A congregation of ecclesiastical persons in a cathedral church, consisting of canons, or prebendaries, whereof the dean is the head, all subordinate to the bishop. And they are termed *"capitulum,"* as a kind of head, instituted not only to assist the bishop but also anciently to rule and govern the diocese in the time of vacation. Burn, Diet.; Coke, Litt. 103.

CHARACTER. Class or division to which claim belongs, Jackson State Nat. Bank of Jackson, Miss., v. Merchants' Bank & Trust Co. of Jackson, Miss., 177 La. 975, 149 So. 539, 541.

The aggregate of the moral qualities which belong to and distinguish an individual person; the general result of the one's distinguishing attributes.

That moral predisposition or habit, or aggregate of ethical qualities, which is believed to attach to a person, on the strength of the common opinion and report concerning him. A person's fixed disposition or tendency, as evidenced to others by his habits of life, through the manifestation of which his general reputation for the possession of a character, good or otherwise, is obtained. Keith v. State, 127 Tenn. 40, 152 S.W. 1029, 1030.

The estimate attached to an individual or thing the community. Biddle v. Riley, 118 Ark. 206, 176 S.W. 134, 137, L.R.A.1915F, 992; Rogers v. State, 126 Tex.Cr.R. 39, 70 S.W.2d 188, 189; H. L. Shaffer & Co. v. Prosser, 99 Colo. 335, 62 P.2d 1161, 1133. The opinion generally entertained of a person derived from the common report of the people who are acquainted with him. Smith v. State, 88 Ala. 73, 7 So. 52; State v. Turner, 36 S.C. 534, 15 S.E. 602.

Although "character" is often used in the sense of "reputation," Garrison v. State, 217 Ala. 322, 116 So. 705; Commonwealth v. Harvie, 345 Pa. 516, 28 A.2d 926, 927; the terms are distinguishable, State v. Taylor, 267 Mo. 41, 183 S.W. 299, 301; Commonwealth v. Webb, 252 Pa. 187, 97 A. 189, 192.

Though, in a subjective sense, character, general character, and general report or reputation are the same. Powers v. Leach, 26 Vt. 278; and though general character has always been proved by proving general reputation. Leverich v. Frank, 6 Or. 213. See, also, Richardson v. State, 94 Tex.Cr.R. 616, 253 S.W. 273, 277. "Character" is what a man is, and "reputation" is what he is supposed to be. State v. Pickett, 202 Iowa, 1321, 210 N.W. 782, 783. "Character" depends on attributes possessed, and "reputation" on attributes which others believe one to possess. Bills v. State, 187 Ind. 721, 119 N.E. 465. The former signifies reality and the latter merely what is accepted to be reality at present. State v. Leabo, 120 Or. 160, 249 P. 363.

CHARBON. Another name for anthrax *(q. v.).*

CHARGE, v. To impose a burden, duty, obligation, or lien; to create a claim against property; to claim; to demand; to accuse; to instruct a jury on matters of law. To impose a tax, duty, or trust. Ex parte Horn, D.C.Wash., 292 F. 455, 457. In commercial transactions, to bill or invoice. George M. Jones Co. v. Canadian Nat. Ry. Co., D. C.Mich., 14 F.2d 852, 855.

A jury is "charged" with duty of trying prisoner (or, as otherwise expressed, with his fate or his "deliverance") as soon as they are impaneled and sworn ; this is a different matter from "charging" the jury in the sense of giving them instructions. Tomasson v. State, 112 Tenn. 596, 79 S. W. 803. And see Keith v. Commonwealth, 197 Ky. 362, 247 S. W. 42, 44.

To load, as a firearm. People v. Limeberry, 298 Ill. 355, 131 N.E. 691, 696.

CHARGE, n. An incumbrance, lien, or claim; a burden or load; an obligation or duty; a liability; an accusation. Darling v. Rogers, 22 Wend. (N. Y.) 491. Custody. Randazzo v. U. S., C.C.A.Mo.,

300 F. 794, 797; In re Boulware's Will, 258 N.Y.S. 522, 144 Misc. 235. Price. Aiken Mills v. United States, D.C.S.C., 53 F.Supp. 524, 526. Rate. Borough of Mechanicsburg v. Valley Rys., 109 Pa. Super. 48, 165 A. 541, 542.

Conversion' of electrical energy into chemical energy within a cell or storage battery. Elliott Works v. Frisk, D.C.Iowa, 58 F.2d 820, 822.

*In Common-law Practice*

The final address by judge to jury before verdict, in which he sums up the case, and instructs jury as to the rules of law which apply to its various issues, and which they must observe. The term also applies to the address of court to grand jury, in which the latter are instructed as to their duties.

*In Contracts*

An obligation. Com.Dig. "Rent," c. 6; 2 Ball & B. 223; Termes de la Ley. An undertaking to keep the custody of another person's goods. State v. Clark, 86 Me. 194, 29 A. 984.

*In Criminal* Law

An accusation or oral charge. People v. Ross, 235 Mich. 433, 209 N.W. 663, 666; Haggard v. First Nat. Bank of Mandan, 72 N.D. 434, 8 N.W.2d 5, 9. A formal complaint, information, or indictment. People v. Lepori, 35 Cal.App. 60, 169 P. 692, 694. A count. State v. Thornton, 142 La. 797, 77 So. 634, 636; State v. Pucketty, 39 N.M. 511, 50 P.2d 964, 965. Accused or arraigned. Code Cr.Proc. § 57. People v. Hickox, 10 N.Y.S.2d 318, 320, 170 Misc. 354.

*In Equity Pleading*

An allegation in the bill of matters which disprove or avoid *a* defense which it is alleged the defendant is supposed to pretend or intend to set up. Story, Eq.P1. § 31; Cooper, Eq.P1. 11; 1 Dan.Ch.Pr. 372, 1883, n.; 11 Ves.Ch. 574.

*In Equity Practice*

A written statement presented to a master in chancery by a party of the items with which the opposite party should be debited or should account for, or of the claim of the party making it. A charge may embrace the whole liabilities of the accounting party. Hoff.Mast. 36.

*In Scotch Law*

The command of the king's letters to perform some act; as a *charge* to enter heir. Also a messenger's execution, requiring a person to obey the order of the king's letters; as a *charge* on letters of horning, or a *charge* against a superior. Bell.

*In the* Law *of Wills*

A responsibility or liability imposed by the testator upon a devisee personally, or upon the land devised. Potter v. Gardner, 12 Wheat. 498, 6 L. Ed. 706; Boal v. Metropolitan Museum of Art of City of New York, C.C.A.N.Y., 298 F. 894, 908. A pecuniary burden. In re Clark's Will, 37 N.Y.S.2d 522, 523, 179 Misc. 75.

A devise for beneficial enjoyment of devisee subject to payment of a sum of money or performance of a particular duty. Howells State Bank v. Pont, 113 Neb. 181, 202 N.W. 457, 459.

*General Charge*

The charge or instruction of the court to the jury upon the case, as a whole, or upon its general features and characteristics.

*Public Charge*

A person whom it is necessary to support at public expense by reason of poverty, insanity and poverty, disease and poverty, or idiocy and poverty. Wallis v. U. S., ex rel. Mannara, C.C.A.N.Y., 273 F. 509, 511. As used in Immigration Act Feb. 5, 1917, § 19, 8 U.S.C.A. § 155, one who produces a money charge on, or an expense to, the public for support and care. Ex parte Kichmiriantz, D.C.Cal., 283 F. 697, 698. As so used, the term is not limited to paupers or those liable to become such, but includes those who will not undertake honest pursuits, or who are likely to become periodically the inmates of prisons. Ex parte Horn, D.C. Wash., 292 F. 455, 457. But see *Ng* Fung Ho v. White, C.C.A.Cal., 266 F. 765, 769.

*Special Charge*

A charge or instruction given by the court to the jury, upon some particular point or question involved in the case, and usually in response to counsel's request for such instruction.

CHARGE AND DISCHARGE. Under former equity practice, in taking an account before a master, a written statement of items for which plaintiff asked credit and a counter-statement, exhibiting claims or demands defendant held against plaintiff.

CHARGE DES AFFAIRES, or CHARGE D'AFFAIRES. The title of a diplomatic representative of inferior rank. In re Baiz, 135 U.S. 403, 10 S.Ct. 854, 34 L.Ed. 222; Du Pont v. Pichon, 4 Da11. 321, 1 L.Ed. 851.

CHARGE—OFF. Anything manifesting intent to eliminate an item from assets. Rubinkam v. Commissioner of Internal Revenue, C.C.A.7, 118 F.2d 148, 149.

CHARGE—SHEET. A paper kept at a police-station to receive each night the names of the persons brought and given into custody, the nature of the accusation, and the name of the accuser in each case. Wharton.

CHARGE TO ENTER HEIR. In Scotch law. A writ commanding a person to enter heir to his predecessor within forty days, otherwise an action to be raised against him as if he had entered.

CHARGEABLE. This word, in its ordinary acceptation, as applicable to the imposition of a duty or burden, signifies capable of being charged, subject to be charged, liable to be charged, or proper to be charged. Gilfillan v. Chatterton, 38 Minn. 335, 37 N.W. 583.

CHARGEANT. Weighty; heavy; penal; expensive. Kelham.

CHARGES. The expenses which have been incurred, or disbursements made, in connection with a contract, suit, or business transaction. Spoken of an action, it is said that the term includes more than what falls under the technical description of "costs."

Instructions. Standard v. Texas Pacific Coal & Oil Co., Tex.Civ.App., 47 S.W.2d 443, 447.

CHARGING LIEN. A lien is a charging lien where the debt is a charge upon the specific property although it remains in the debtor's possession. See, also, Attorney's Lien,

CHARGING ORDER. See Order.

CHARITABLE. Having the character or purpose of a charity *(q. v.).*

The term is sometimes deemed to be synonymous with "eleemosynary," Hamburger v. Cornell University, 166 N.Y.S. 46, 48, 99 Misc. 564; with "benevolent," In re Dol's Estate, 182 Cal. 159, 187 P. 428, 431; with "beneficent," People v. Thomas Walters Chapter of Daughters of American Revolution, 311 Ill. 304, 142 N.E. 566.

CHARITABLE BEQUEST. A bequest is charitable if its aims and accomplishments are of

religious, educational, political, or general social interest to mankind and if the ultimate recipients constitute either the community as a whole or an unascertainable and indefinite portion thereof. In re Henderson's Estate, 17 Cal.2d 853, 112 P.2d 605, 607, 609. See, also, Charity.

CHARITABLE CORPORATION. One that freely and voluntarily ministers to the physical needs of those pecuniarily unable to help themselves. In re Rockefeller's Estate, 177 App.Div. 786, 165 N.Y.S. 154, 158. One which, by its powers, or usage, is charged with administering charitable relief. In re Beekman's Estate, 196 App.Div. 681, 188 N.Y.S. 178, 179. One organized for the purpose, among other things, of promoting the welfare of mankind at large, or of a community, or of some class from a part of it indefinite as to number of individuals. In re Dol's Estate, 186 Cal. 64, 198 P. 1039.

CHARITABLE GIFT. See Charity.

CHARITABLE HOSPITAL OR SANITARIUM. One maintained for gratuitous treatment of sick and needy. Moss v. Youngblood, 187 Ga. 188, 200 S.E. 689, 694. One not maintained for a gain, profit or private advantage. In re Farmers' Union Hospital Ass'n of Elk City, 190 Okl. 661, 126 P.2d 244, 246. One operated by means of contributions, Bedford v. Colorado Fuel & Iron Corporation, 102 Colo. 538, 81 P.2d 752, 759, 760. One when charges collected are no more than needed for maintenance. Gundry v. R. B. Smith Memorial Hospital Ass'n, 293 Mich. 36, 291 N.W. 213, 214, 215. One when income from patients able to pay is used for maintenance or extension of facilities devoted to charitable purposes. Benton County v. Allen, 170 Or. 481, 133 P.2d 991, 992, 993, 995. One which does not deny treatment to persons unable to pay though it charges those able to pay. Commissioner of Internal Revenue v. Battle Creek, C.C.A. Fla., 126 F.2d 405, 406.

CHARITABLE INSTITUTION. One supported in whole or in part at public expense or by charity. City of Vicksburg v. Vicksburg Sanitarium, 117 Miss. 709, 78 So. 702. One for the relief of a certain class of persons, either by alms, education, or care. Utica Trust & Deposit Co. v. Thompson, 87 Misc. 31, 149 N.Y.S. 392, 398. One administering a public or private charity; an eleemosynary institution. St. Albans Hospital v. Town of Enosburg, 96 Vt. 389, 120 A. 97, 99. One performing service of public good or welfare without profit. Society of Cincinnati v. Exeter, 92 N.H. 348, 31 A.2d 52, 55.

CHARITABLE ORGANIZATION. One which has no capital stock and no provision for making dividends and profits, but derives its funds mainly from public and private charity, and holds them in trust for the objects and purposes expressed in its charter. Congregational Sunday School & Publishing Soc. v. Board of Review, 290 Ill. 108, 125 N.E. 7, 9. One conducted not for profit, but for promotion of welfare of others. Stearns v. Association of Bar of City of New York, 154 Misc. 71, 276 N.Y.S. 390.

CHARITABLE SCHOOL OR EDUCATIONAL INSTITUTION. A college preparatory school operated without profit some of whose students paid no tuition, College Preparatory School for Girls of Cincinnati v. Evatt, 144 Ohio St. 408, 59 N.E.2d 142, 145. One devoted to public education without private gain. Southern Methodist University v. Clayton, 142 Tex. 179, 176 S.W.2d 749, 750. One supported wholly or in part by public subscriptions or endowment, New York University v. Taylor, 251 App.Div. 444, 296 N.Y.S. 848, 849; or by private charity. Bodenheimer v. Confederate Memorial Ass'n, D.C.Va., 5 F.Suppe 526, 528,

CHARITABLE SOCIETY. An educational institution is a charitable society. In re Cooper's Estate, 229 Iowa 921, 295 N.W. 448, 454.

CHARITABLE USES OR PURPOSES. Originally those enumerated in the statute 43 Eliz. c. 4, and afterwards those which, by analogy, come within its spirit and purpose. Boyle, Char. 17. See, also, Charity.

CHARITABLE TRUST. A fiduciary relationship subjecting holder of property to deal with it for a charitable purpose. In re White's Estate, 340 Pa. 92, 16 A.2d 394, 396, 397. A trust for benefit of public or of some portion thereof. Delaware Trust Co. v. Fitzmaurice, Del.Ch., 31 A.2d 383, 388. Its characteristics are the expression of a definite charitable purpose and the indefiniteness of the beneficiaries. Woodcock v. Wachovia Bank & Trust Co., 214 N.C. 224, 199 S.E. 20.

A cemetery corporation is a "charitable trust". De Geeter v. Wolklin, 133 N.J.Eq. 510, 42 A.2d 561, 562. So, too, a Christian church. Burgle v. Muench, 65 Ohio App. 176, 29 N.E.2d. 439, 440.

CHARITY. The word "charity" may be used in a subjective or an objective sense.

It may mean or apply to:

Accomplishment of some social interest, In re Tollinger's Estate, 349 Pa. 393, 37 A.2d 500, 501, 502. Act or feeling of benevolence, Southern Methodist Hospital and Sanatorium of Tucson v. Wilson, 51 Ariz. 424, 77 P.2d 458. Advancement of purposes beneficial to public, Rabinowitz v. Wollman, 174 Md. 6, 197 A. 566, 568. All good affections men ought to bear towards each other. Morice *v.* Bishop of Durham, 9 Ves. 399. All which aids man and seeks to improve his condition. Waddell v. Young Women's Christian Ass'n, 133 Ohio St. 601, 15 N.E.2d 140, 142. Almsgiving, In re Rathbone's Estate, 11 N.Y.S.2d 506, 527, 170 Misc. 1030. Amelioration of persons in unfortunate circumstances, Second Nat. Bank v. Second Nat. Bank, 171 Md. 547, 190 A. 215, 111 A.L.R. 711. An institution founded by a gift and intended for public use as a hospital, library, school, or museum, Southern Methodist Hospital and Sanatorium of Tucson v. Wilson, 51 Ariz. 424, 77 P.2d 458, 460, 461. Any purpose in which the public has an interest, Collins v. Lyon, Inc., 181 Va. 230, 24 S.E.2d 572, 580. Any purpose of general benefit untainted by motives of private gain. Stearns v. Association of Bar of City of New York, 276 N.Y.S. 390, 395, 154 Misc. 7L Any scheme or effort to better the condition of society or any considerable part thereof. Tharpe v. Central Georgia Council of Boy Scouts of America, 185 Ga. 810, 196 S.E. 762, 764, 116 A.L.R. 373. Assistance to persons in establishing. Bruce v. Young Men's Christian Ass'n, 51 Nev. 372, 277 P. 798, 799; assistance to the needy. Benefit of handcraftsmen. Benefit *of* an indefinite number of persons, Morgan v. National Trust Bank of Charleston, 331 M. 182, 162 N.E. 888, 890. Benefit of minister. In re Edge's Estate, 288 N.Y.S. 437, 440, 159 Misc. 505. Benevolence, philanthropy, and good will. Santa Fe Lodge No. 460, B. P. 0. E., v. Employment Sec.

Commission, 49 N.M. 149, 159 P.2d 312, 315. Benevolent or philanthropic, Beckwith v. Parish, 69 Ga. 569; Price v. Maxwell, 28 Pa. 2.3. Dissemination of knowledge; Christian love, Boruch v. SS. Peter & Paul's Orthodox Russian Church, 111 N.J.L. 116, 166 A. 723. Conferring advantages of a social character. La Societe Francaise De Bienfaisance Mutuelle v. California Employment Commission, 56 Cal.App.2d 534, 133 P.2d 47, 51, 52. Eleemosynary, Collier v. Lindley, 203 Cal. 641, 266 P. 526, 528. General public use which extends to the rich as well as to the poor. Hamilton v. Corvallis General Hospital Ass'n, 146 Or. 168, 30 P.2d 9, 14. Gift for benefit of indefinite number, St. Louis Union Trust Co. *v.* Burnet, C.C.A., 59 F.2d 922, 926. Gift to the general public use. Maretick v. South Chicago Community Hospital, 297 Ill. App. 488, 17 N.E.2d 1012, 1014. Gift without consideration or expectation of return, State v. Texas Mut. Life Ins. Co. of Texas, Tex.Civ.App., 51 S.W.2d 405, 410. Improvement of man. Boston Symphony Orchestra v. Board of Assessors of City of Boston, Mass., 1 N.E.2d 6, 9. Improvement of spiritual, mental, social and physical conditions. Andrews v. Young Men's Christian Ass'n of Des Moines, 226 Iowa 374, 284 N.W. 186, 192. Lessening burdens of government. Stork v. Schmidt, 129 Neb. 311, 261 N.W. 552, 554. Physical, mental or moral betterment, In re Tollinger's Estate, 349 Pa. 393, 37 A.2d 500, 501, 502. Promotion of government or municipal purposes, Powers v. First Nat. Bank, Tex.Civ.App., 137 S.W.2d 839, 842. Promotion of happiness of man. Old Colony Trust Co. v. Welch, D.C.Mass., 25 F.Supp. 45, 48. Promotion of philanthropic and humanitarian purposes. Jackson v. Phillips, 14 Allen, Mass., 556. Promotion of well-doing and well-being of social man. Krause v. Peoria Housing Authority, 370 Ill. 356, 19 N.E.2d 193, 199. Promotion or fostering science, education, enlightenment, benefit, of mankind, Irwin v. Swinney, D.C.Mo., 44 F.2d 172, 174. Property held for public purposes. St. Louis Union Trust Co. v. Burnet, C.C.A.8, 59 F.2d 922, 927. Public benefit, convenience, utility, or comfort, Camp v. Presbyterian Soc. of Sackets Harbor, 173 N.Y.S. 581, 584, 105 Misc. 139. Reclamation of criminals. Relief of persons in unfortunate circumstances, Second Nat. Bank v. Second Nat. Bank, 171 Md. 547, 190 A. 215, 111 A.L.R. 711. Religious, educational, benevolent, and humanitarian objects. In re Jordan's Estate, 329 Pa. 427, 197 A. 150. Services accorded to the needy. Unselfish things as are wont to be done by those who are animated by love. Bok v. McCaughn, C.C.A.Pa., 42 F.2d 616, 619. What is done out of good will and a desire to add to the improvement of moral, mental, and physical welfare of public. Old Colony Trust Co. v. Welch, D.C.Mass., 25 F.Supp. 45, 48. Whatever is given for love of God or love of your neighbor, free from every consideration that Is personal, private, or selfish. Vidal v. Girard, 2 How. 128, 11 L.Ed. 205, appr. Price v. Maxwell, 28 Pa. 35. Whatever proceeds from sense of moral duty or feeling of kindness and humanity for relief or comfort of another, Doyle v. Railroad Co., 118 Mass. 195, 198, 19 Am. Rep. 431. Uncertainty regarding beneficiaries is distinct feature. Goode's Adm'r v. Goode, 238 *Ky.* 620, 38 S.W.2d 691, 694.

### Foreign Charity

One created or endowed in a state or country foreign to that of the domicile of the benefactor. Taylor's Ex'rs v. Trustees of Bryn Mawr College, 34 N.J.Eq. 101.

### Public Charity

A charity wherein the benefit is conferred on indefinite persons composing the public or some part of the public. Continental Illinois Nat. Bank & Trust Co. v. Harris, 359 Ill. 86, 194 N.E. 250, 253.

A gift to be applied consistently with existing laws for the benefit of an indefinite number of persons, by bringing their minds under the influence of education or religion, by relieving their bodies from disease, suffering, or constraint, or by assisting them to establish themselves in life, or by erecting and maintaining public buildings or works, or otherwise lessening the burdens of government. Robinson v. Crutcher, 277 Mo. 1, 209 S.W. 104, 105.

A "purely public charity" which Legislature may exempt from taxation is a charity indiscriminately dispensed to some portion or group of public where ends accomplished are wholly benevolent and are accomplished without profit or gain and, the beneficiaries are saved from becoming burdens upon society and the state. City of Houston v. Scottish Rite Benev. Ass'n, 111 Tex. 191, 230 S. W. 978, 981.

### Pure Charity

One which is entirely gratuitous, and which dispenses its benefits without any charge or pecuniary return whatever. See In re Lenox's Estate, Sur., 9 N.Y.S. 895, 31 St.R. 959; Kentucky Female Orphan School v. Louisville, 100 Ky. 470, 36 S.W. 921, 40 L.R.A. 119.

CHARLATAN. One who pretends to more knowledge or skill than he possesses; ' a "quack." Brinkley v. Fishbein, C.C.A.Tex., 110 F.2d 62, 64.

CHARLEY. A familiar nickname or substitute for "Charles." Carroll v. State, 24 Okl.Cr. 26, 215 P. 797, 798.

CHARRE OF LEAD. A quantity consisting of 36 pigs of lead, each pig weighing about 70 pounds.

CHART. The word "chart," as used in the copyright law, does not include sheets of paper exhibiting tabulated or methodically arranged information. Taylor v. Gilman, C.C.N.Y., 24 Fed. 632.

CHARTA.

### In Old English Law

A charter or deed; an instrument written and sealed; the formal evidence of conveyances and contracts. Also any signal or token by which an estate was held.

The term came to be applied, by way of eminence, to such documents as proceeded from the sovereign, granting liberties or privileges, and either where the recipient of the grant was the whole nation, as in the case of *Magna Charta,* or a public body, or private individual, in which case it corresponded to the modern word "charter."

### In the Civil Law

Paper, suitable for the inscription of documents or books; hence, any instrument or writing. See Dig. 32, 52, 6; Nov. 44, 2.

#### *Charta Communis*

In old English law. An indenture; a common or mutual charter or deed; one containing mutual covenants, or involving mutuality of obligation; one to which both parties might have occasion to refer, to establish their respective rights. Bract. fols. 33b, 34.

#### *Charta Cyrographata (or Chyrographata)*

In old English law. A chirographed charter; a charter executed in two parts, and cut through the middle, *(scinditur per medium,)* where the word *"cyrographum,"* or *"chirographum,"* was written in large letters. Bract fol. 34; Fleta, lib. 3, c. 14, § 3. See Chirograph.

#### *Charta De Foresta*

A collection of the laws of the forest, made in the 9th Hen. III, and said to have been originally a part of *Magna Charta.*

The *charta de foresta* was called the Great Charter of the woodland population, nobles, barons, freemen, and slaves, loyally granted by Henry III. early in his reign (A.D.1217). Inderwick, King's Peace 159; Stubb's Charters 847. There is a difference of opinion as to the *original* charter of the forest similar to that which exists respecting the true and original Magna Carta *(q. v.),* and for the same reason, viz., that both required repeated confirmation by the kings, despite their supposed inviolability. This justifies the remark of recent historians as to the great charter that "this theoretical sanctity and this practical insecurity are

Shared with 'the Great Charter of Liberties' by the Charter of the Forest which was issued in 1217." 1 Poll. & Maitl. 158. It is asserted with great positiveness by Inderwick that no forest charter was ever granted by King John, but that Henry III. issued the charter of 1217 (which he puts in the third year of the reign, which, however, only commenced Oct. 28, 1216), in pursuance of the promises of his father; and Lord Coke, referring to it as a charter on which the lives and liberties of the woodland population depended, says that it was confirmed at least thirty times between the death of John and that of Henry V. ; 4 Co. Inst. 303.

Webster, under the title Magna Charta, says that the name is applied to the charter granted in the 9th Hen. III. and confirmed by Edw. I. Prof. Maitland, in speaking of Magna Carta, refers to "the sister-charter which defined the forest law" as one of the four documents which, at the death of Henry III., comprised the written law of England. 1 Soc. England 410. Edward I. in 1297 confirmed "the charter made by the common consent of all the realm in the time of Henry III. to be kept in every point without breach." Inderwick, King's Peace 160; Stubb's Charters 486. The Century Dictionary refers to this latter charter of Edw. I. as *the* Charter of the Forest; but it was, as already shown, only a confirmation of it, and a comparison of the authorities leaves little if any doubt that the date was as above stated and the history as here given. Its provisions may be found in Stubb's Charters and they are summarized by Inderwick, in his work above cited.

*Charta De Una Parte*

A deed-poll; a deed of one part. Formerly used to distinguish a *deed* poll—that is, an agreement made by one party only—from a deed *inter partes.* Co.Litt. 229.

*Charta Partita*

(Literally, a deed divided.) A charter-party. 3 Kent, Comm. 201.

CHARTA DE NON ENTE NON VALET. A deed of a thing not in being is not valid. Co.Litt. 36.

CHARTA NON EST NISI VESTIMENTUM DONATIONIS. A deed is nothing else than the vestment of a gift. Co.Litt. 36.

CHAUSSIEE. Fr. A levee of earth, made to retain the water of a river or pond; a levee made in low, wet, and swampy places to serve as a road. Armas v. New Orleans, 3 La. 86, 99.

CHARTIE LIBERTATUM. The charters (grants) of liberties. These are *Magna Charta* and *Charta* de *Foresta.*

CHARTARUM SUPER FIDEM, MORTUIS TESTIBUS, AD PATRIAM DE NECESSITUDINE RECURRENDUM EST. Co.Litt. 36. The witnesses *being* dead, the truth of charters must of necessity be referred to the country, *i. e.,* a jury.

CHARTE. Fr. A chart, or plan, which mariners use at sea.

CHARTE-PARTIE. Fr. In French marine law. A charter-party.

CHARTEL. A variant of "cartel" *(q. v.).*

CHARTER, v. In mercantile law. To hire or lease a vessel for a voyage. Thus, a "chartered" is distinguished from a "seeking" ship. 7 East, 24.

CHARTER, n. An instrument emanating from the sovereign power, in the nature of a grant, either to the whole nation, or to a class or portion of the people, or to a colony or dependency, and assuring to them certain rights, liberties, or powers. Such was the "Great Charter" or *"Magna Charta,"* and such also were the charters granted to certain of the English colonies in America. See Story, Const. § 161; 1 Bla.Comm. 108.

A charter differs from a constitution, in that the former is granted by the sovereign, while the latter is established by the people themselves.

A city's organic law. Hudson Motor Car Co. v. City of Detroit, 282 Mich. 69, 275 N.W. 770, 773, 113 A.L.R. 1472.

An act of a legislature creating a corporation, or creating and defining the franchise of a corporation. Baker v. Smith, 41 RI. 17, 102 A. 721, 723; Bent v. Underdown, 156 Ind. 516, 60 N.E. 307. Also a corporation's constitution or organic law; Schultz v. City of Phcenix, 18 Ariz. 35, 156 P. 75, 76; C. J. Kubach Co. v. McGuire, 199 Cal. 215, 248 P. 676, 677; that is to say, the articles of incorporation taken in connection with the law under which the corporation was organized; Chicago Open Board of Trade v. Imperial Bldg. Co., 136 Ill.App. 606; In re Hanson's Estate, 38 S.D. 1, 159 N.W. 399, 400. The authority by virtue of which an organized body acts. Ryan v. Witt, Tex. Civ.App., 173 S.W. 952, 959. A contract between the state and the corporation, between the corporation and the stockholders, and between the stockholders and the state. Bruun v. Cook, 280 Mich. 484, 273 N.W. 774, 777.

In Old English Law

A deed or other written instrument under seal; a conveyance, covenant, or contract. Cowell; Spelman; Co.Litt. 6; 1 Co. 1; F.Moore 687.

In Old Scotch Law

A disposition made by a superior to his vassal, for something to be performed or paid by him. 1 Forb.Inst. pt. 2, b. 2, c. 1, tit. 1. A writing which contains the grant or transmission of the feudal right to the vassal. Ersk.Inst. 2, 3, 19.

Blank Charter

A document given to the agents of the crown in the reign of Richard II. with power to fill up as they pleased.

*Charter of Pardon*

In English law. An instrument under the great seal, *by* which a pardon *is* granted to a man for a felony or other offense.

*Charter of the Forest*

See Charts de foresta.

*Charter Rolls*

Ancient English records of royal charters, granted between the years 1199 and 1516.

CHARTER-HOUSE. Formerly a convent of Carthusian monks in London; now a college founded and endowed by Thomas Sutton. The governors of the charter-house are a corporation aggregate without a head, president, or superior, all the members being of equal authority. 3 Steph. Comm. (7th Ed.) 14, 97.

CHARTER-LAND. In English law. Otherwise called "book-land." Property held by deed under

certain rents and free services. It, in effect, differs nothing from the free socage lands, and hence have arisen most of the freehold tenants, who hold of particular manors, and owe suit and service to the same. 2 Bl.Comm. 90.

CHARTER-PARTY. A contract by which a ship, or some principal part thereof, is let to a merchant for the conveyance of goods on a determined voyage to one or more places. Fish v. Sullivan, 40 La.Ann. 193, 3 So. 730; Vang v. Jones & Laughlin Steel Corporation, D.C.Pa., 7 F.Supp. 475, 478.

A specific and express contract by which the owner lets a vessel or some particular part thereof to another person for a specified time or use. Jones & Laughlin Steel Corporation v. Vang, C.C.A.Pa., 73 F.2d 88, 91.

A written agreement by which a ship-owner lets the whole or a part to a merchant for the conveyance of goods in consideration of payment of freight. Maude & P. Mer. Shipp. 227; Parker v. Washington Tug & Barge Co., 85 Wash. 575, 148 P. 896, 898. 3 Kent Comm. 201.

The contract by which a ship owner may either let the capacity or burden of the ship, continuing the employment of the owner's master, crew, and equipments, or may surrender the entire ship to the charterer, who then provides them himself. The master or part owner may be a charterer. Civil Code Cal. § 1959; Civil Code Dak. § 1127.

"A charter party may be a contract for the lease of the vessel, or for a special service to be rendered by the owner of the vessel. Where, as is very frequently the case, the shipowner undertakes to carry a cargo, to be provided by the charterer, on a designated voyage, the arrangement is * * * a mere contract of affreightment." United States v. Hvoslef, 237 U. S.' 1, 35 S.Ct. 459, 460, 59 L. Ed. 813, Ann. Cas.1916A, 286.

CHARTERED SHIP. A ship hired or freighted; a ship which is the subject-matter of a charter-party.

CHARTERER. In mercantile law. One who charters *(i. e.,* hires or engages) a vessel for a voyage; a freighter. 2 Steph.Comm. 184; 3 Kent, Comm. 137; Turner v. Cross, 83 Tex. 218, 18 S.W. 578, 15 L.R.A. 262.

CHARTIS REDDENDIS. (For returning the charters.) An ancient writ which lay against one who had charters of feoffment intrusted to his keeping and refused to deliver them. Reg.Orig. 159.

CHARTOPHYLAX. In old European law. A keeper of records or public instruments; a chartulary; a registrar. Spelman.

CHARLIE. In old English law. A plow. *Bestes des char$^{g}$es;* beasts of the plow.

CHASE. The liberty or franchise of hunting, one's self, and keeping protected against all other persons, beasts of the chase within a specified district, without regard to the ownership of the land. 2 Bl.Comm. 414-416.

The act of acquiring possession of animals *ferce naturce* by force, cunning, or address.

A privileged place for preservation of deer and beasts of the forest. It is commonly less than a forest and of larger compass than a park. Every forest is a chase, but every chase is not a forest. It differs from a park in that it is not inclosed, yet it must have certain metes and bounds. Manwood, 49: *Termes de la Ley.*

Common Chase

In old English law. A place where all - alike were entitled to hunt wild animals.

CHASSIS. As applied to a motor car,- the rectangular metal framework, as distinguished from its body and seats, but including its accessories for propulsion, as the tanks, motor, etc., and general running gear. Kansas City Automobile School Co. v. Holcker-Elberg Mfg. Co., Mo.App., 182 S.W. 759, 761.

CHASTE. Never voluntarily having had unlawful sexual intercourse. Marchand v. State, 113 Neb. 87, 201 N.W. 890, 891. An unmarried woman who has had no carnal knowledge of men. New v. State, 141 Tex.Cr.R. 536, 148 S.W.2d 1099, 1101.

One who falls from virtue and afterwards reforms is chaste within the meaning of the seduction statutes. Wood v. State, 48 Ga. 288, 15 Am.Rep. 664; People v. Weinstock, 27 N.Y.Cr.R. 53, 140 N.Y.S. 453, 456.

CHASTE CHARACTER. Denoting purity of mind and innocence of heart;—not limited merely to unlawful sexual intercourse. State v. Wilcoxen, 200 Iowa, 1250, 206 N.W. 260, 261.

As used in statutes, means actual personal virtue. It may include the character of one who was formerly unchaste but is reformed. Boak v. State, 5 Iowa, 430; People v. Nelson, 153 N.Y. 90, 46 N.E. 1040, 60 Am.St.Rep. 592.

CHASTITY. Purity; continence.

It means that virtue which prevents the unlawful intercourse of the sexes; the state of purity or abstinence from unlawful sexual connection, People v. Kehoe, 123 Cal. 224, 55 P. 911, 69 Am.St.Rep. 52; actual personal virtue and character, and not a mere external reputation for chastity. People v. Weinstock, 27 N.Y.Cr.R. 53, 140 N.Y.S. 453, 457. See Chaste.

CHATTEL. An article of personal property; any species of property not amounting to a freehold or fee in land. People v. Holbrook, 13 Johns., N.Y., 94; *U.* S. v. Sischo, C.C.A.Wash., 270 F. 958, 961. A thing personal and movable. Castle v. Castle, C.C.A.Haw., 267 F. 521, 522. Things which in law are deemed personal property, they are divisible into chattels real and chattels personal.

The term "chattels" is a more comprehensive one than "goods," as it includes animate as well as inanimate property. 2 Chit.Bl.Comm. 383, note. In a devise, however, they may be of the same import. Shep.Touch. 447; 2 Fonbl. Eq. 335.

Chattel Interest

An interest in corporeal hereditaments less than a freehold. 2 Kent, Comm. 342.

Personal Chattels

Movable things. 2 Bl.Comm. 387; 2 Kent, 340; Co.Litt. 48a; 4 Co. 6; In re Gay, 5 Mass. 419; Miller v. Hirschmann, 170 Md. 145, 183 A. 259, 263.

Evidences of debt are chattels personal. Greene Line Terminal Co. v. Martin, 122 W.Va. 483, 10 S.E.2d 901, 906.

Real Chattels

Such as concern, or savor of, the realty, such as leasehold estates; interests issuing out of, or annexed, to, real estate; such chattel interests as

devolve after the manner of realty. Mozley & Whitley; 2 Bl.Comm. 386; In re Dalton's Estate, 183 Iowa, 1013, 168 N.W. 332, 334; Intermountain Realty Co. v. Allen, 60 Idaho 228, 90 P.2d 704, 706, 122 A.L.R. 647; Keystone Pipe & Supply Co. v. Crabtree, 174 Okl. 562, 50 P.2d 1086, 1088. An interest in real estate less than freehold, Lincoln Nat. Bank & Trust Co. of Fort Wayne v. Nathan, 215 Ind. 178, 19 N.E.2d 243, 249.

CHATTEL MORTGAGE. A mortgage on chattels. O'Connor v. Hassett, 207 Iowa, 155, 222 N.W. 530. A transfer of some legal or equitable right in personal property or creation of a lien thereon as security for payment of money or performance of some other act, Miller v. Eagle, Star & British Dominions Ins. Co., Limited, of London, England, United States Branch, New York, 146 S.C. 123, 143 S.E. 663, 666; Columbia Cas. Co. v. Sodini, 159 Kan. 478, 156 P.2d 524, 528; Anglo-American Mill Co. v. First Nat. Bank, 76 Colo. 57, 230 P. 118, 120; subject to defeasance on performance of the conditions. Personal Finance Co. of Providence v. Henley-Kimball Co., R.I., 1 A.2d 121, 124, 117 A.L.R. 1476; Thomas, Mortg. 427.

An instrument of sale of personalty conveying title td mortgagee with terms of defeasance; and, if the terms of redemption are not complied with, then, at common law, the title becomes absolute. Stewart v. Slater, 6 Duer (N. Y.) 99; In re Packard Press, C.C.A.N.Y., 5 F.2d 633, 635. A bill of sale with a defeasance clause incorporated in it. Monongahela Ins. Co. v. Batson, 111 Ark. 167, 163 S.W. 510, 511; Bank of Dillon v. Murchison, C.C.A.4, 213 F. 147, 151.

An absolute pledge, to become an absolute interest if not redeemed at a fixed time. Cortelyou v. Lansing, 2 Caines, Cas., N.Y., 200, per Kent, Ch.

A conditional sale of chattel as security for debt or performance of some other obligation. Jones, Chat. Mortg. § 1. Allen v. Steiger, 17 Colo. 552, 31 P. 226; Adler, Salzman & Adler v. Ammerman Furniture Co., 100 Conn. 223, 123 A. 268, 269.

A pledge is distinguished from a chattel mortgage in that in a mortgage, the title is transferred; in a pledge, the possession. Jones, Mortg. § 4; Security Trust Co. v. Edwards, 90 N.J.Law, 558, 101 A. 384, 385, L.R.A.1917F, 273; Thompson v. Dollivdr, 132 Mass. 103; Thoen v. First Nat. Bank, 199 Minn. 47, 271 N.W. 111, 113; In pledge, the pawnee has only a special property in the thing deposited. Evans v. Darlington, 5 Blackf., Ind., 320.

A conditional sale is distinguished from a chattel mortgage in that the purchaser has merely a right to purchase, and no debt or obligation exists on the part of the vendor. Weathersly v. Weathersly, 40 Miss. 462, 90 Am.Dec. 344; Gomez v. Kamping, 4 Daly, N.Y., 77. In mortgage, title passes; in conditional sale possession is transferred and title retained. Kettwig v. Aero Inv. Co., 191 Minn. 500, 254 N.W. 629.

CHATTEL REAL. All interests in real estate of lesser dignity than a freehold estate, and which lesser estates or interest descended under the rules for devaluation of personal property and not as freehold or fee simple estates. Intermountain Realty Co. v. Allen, 60 Idaho 228, 90 P.2d 704, 705, 122 A.L.R. 647.

CHAUD-MEDLEY. A homicide committed in the heat of an affray and while under the influence of passion; it is thus distinguished from *chance-medley,* which is the killing of a man in a casual affray in self-defense. 4 Bl.Comm. 184. It has been said, however, that the distinction is of no great importance. See 1 Russ.Crimes, 660.

CHAUFFEUR. An operator who directly or indirectly receives compensation for operating motor vehicle. Turner v. State, 226 Ala. 269, 146 So. 601. Operators who drive jitneys in cities and towns for hire, Day v. Bush, 18 La.App. 682, 139 So. 42, 44. Person employed or paid to operate, drive and attend car. People v. Fulton, 96 Misc. 663, 162 N.Y.S. 125, 126; Des Moines Rug Cleaning Co. v. Automobile Underwriters, 215 Iowa 246, 245 N.W. 215, 217; State v. Depew, Md., 175 Md. 274, 1 A.2d 626, 627.

Test whether person is a chauffeur is whether he operated motor vehicle in whole or part-time employment, whether he was at such time an employee, servant, agent, or independent contractor, and whether he was paid for his service. Maryland Casualty Co. v. Cronholm, D.C.Tex., 32 F.Supp. 375, 377.

CHAUMPERT. A kind of tenure mentioned in a patent of 35 Edw. III. Cowell; Blount.

CHAUNTRY RENTS. Money paid to the crown by the servants or purchasers of chauntry-lands. See Chantry.

CHEAT, v. To deceive and defraud. State v. Mastin, 277 Mo. 495, 211 S.W. 15, 18; Moore v. State, 92 Ind.App. 150, 168 N.E. 202, 203. It necessarily implies a fraudulent intent. Clolinger v. Callahan, 204 Ky. 33, 263 S.W. 700, 702.

The words "cheat and defraud" usually mean to induce a person to part with the possession of property by reason of intentionally false representations relied and acted upon by such person to his harm. Antonio Pepe Co. v. Apuzzo, 98 Conn. 807, 120 A. 681, 682; They include not only the crime of false pretenses, but also all civil frauds. Hinshaw v. State, 188 Ind. 147, 122 N.E. 418, 419. They include all tricks, devices, artifices, or deceptions used to deprive another of property or other right. State v. Parker, 114 Conn. 354, 158 A. 797, 800.

CHEAT, n. Swindling; defrauding. "Deceitful practices in defrauding or *endeavoring* to defraud another of his known right, by some *willful device,* contrary to the plain rules of common honesty." Hawk.P.C. b. 2, c. 23, § 1. "The fraudulent obtaining the property of another by any deceitful and illegal practice or token (short of felony) which affects or may affect the public." Steph.Crim. Law, 93.

Cheats, punishable at common law, are such cheats (not amounting to felony) as are effected by deceitful or illegal symbols or tokens which may affect the public at large, and against which common prudence could not have guarded. 2 Whart.Crim.Law, § 1116; 2 East, P.C. 818; Von Mumm v. Frash, C.C.N.Y., 56 F. 836; State v. Parker, 43 N.H. 85.

CHEATERS, or ESCHEATORS, were officers appointed to look after the king's escheats, a duty which gave them great opportunities of fraud and oppression, and in consequence many complaints were made of their misconduct. Hence it seems that a *cheater* came to signify a fraudulent person, and thence the verb to *cheat* was derived. Wharton.

CHECK, v. To control or restrain; to hold within bounds. To verify or audit; to verify, guard, or examine the work of another. Marsh v. State, 125

Ark. 282, 188 S.W. 815, 816; State v. Hearn, 115 Ohio St. 340, 154 N.E. 244, 245. Particularly used with reference to the control or supervision of one department, bureau, office, or person over another.

As used in initiative statute, to compare names of signer of petition against official registration list. Halgren v. Welling, 91 Utah, 16, 63 P.2d 550, 554.

CHECK, n. A commercial device intended for use as a temporary expedient for actual money, and generally designed for immediate payment, and not for circulation. Kennedy v. Jones, 140 Ga. 302, 78 S.E. 1069, 1070, Ann.Cas.1914D, 355; Merchants' Nat. Bank v. Bank, 10 Wall. 647, 19 L.Ed. 1008.

A draft for payment of money. Wright v. Loring, 351 Ill. 584, 184 N.E. 865, 866. An order for payment of money. Glennan v. Rochester Trust & Safe Deposit Co., 209 N.Y. 12, 102 N.E. 537, 539, 52 L.R.A.,N.S., 302, Ann.Cas.1915A, 441; Weiss v. Fenwick, 111 N.J.Eq. 385, 162 A. 609, 611; Anderson v. National Bank of Tacoma, 146 Wash. 520, 264 P. 8, 10. A request to pay money, Standard Factors Corporation v. Manufacturers Trust Co., 182 Misc. 701, 50 N.Y. S.2d 10, 13.

A draft or order upon a bank or banking-house, purporting to be drawn upon a deposit of funds, for the payment at all events of a certain sum of money to a certain person therein named, or to him or his order, or to bearer, and payable instantly on demand. 2 Daniel, Neg.Inst. § 1566; Bank v. Wheaton, 4 R.I. 33; Economy Fuse & Mfg. Co. v. Standard Electric Mfg. Co., 359 Ill. 504, 194 N.E. *922, 924.*

A bill of exchange drawn on a bank payable on demand. Commercial & Savings Bank Co. of Bellafontaine, Ohio, v. Citizens' Nat. Bank of Franklin, 68 Ind. App. 417, 120 N.E. 670, 674; Bell-Wayland Co. v. Bank of Sugden, 95 Okl. 67, 218 P. 705, 706; Thomas v. Berger, 118 Pa.Super. 422, 180 A. 32. A check differs from an ordinary bill of exchange in that it is drawn on a bank or bankers, and is payable immediately on presentment, without days of grace; it is payable immediately on presentment, and no acceptance as distinct from payment is required; it is supposed to be drawn upon a previous deposit'of funds, and is an absolute appropriation of so much money in the hands of the bankers to the holder of the check. Merchants' Nat. Bank v. State Nat. Bank, 10 Wall. 647, 19 L.Ed. 1008; People v. Compton, 123 Cal. 403, 56 P. 44.

The term "check," within the ordinary meaning of that, term, includes "draft," the only distinction being that in a draft the drawer is a bank, while in the ordinary check the drawer is an individual. Leach v. Mechanics' Say. Bank, 202 Iowa, 899, 211 N.W. 506, 508, 50 A.L.R. 388.

A check is a contract. Deal v. Atlantic Coast Line R. Co., 225 Ala. 533, 144 So. 81, 82, 86 A.L.R. 455; Roff v. Crenshaw, dal.App., 159 P.2d 661, 662.

Cashier's *Check*

One issued by an authorized officer of a bank directed to another person, evidencing that the payee is authorized to demand and receive upon presentation from the bank the amount of money represented by the check. State v. Tyler County State Bank, Tex.Com.App., 277 S.W. 625, 627, 42 A. L.R. 1347. A form of a check by which the bank lends its credit to the purchaser of the check, the purpose being to make it available for immediate use in banking circles. Duke v. Johnson, 127 Wash. 601, 221 P. 321, 322. A bill of exchange drawn by a bank upon itself, and accepted by the act of issuance. Anderson v. Bank of Tupelo, 135 Miss. 351, 100 So. 179; In its legal effect, it is the same as a certificate of deposit, certified check or draft. Montana-Wyoming Ass'n of Credit Men v. Commercial Nat. Bank of Miles City, 80 Mont. 174, 259 P. 1060, 1061. An acknowledgment of a debt drawn by bank upon itself. In re Liquidation of State Bank of Binghamton, 152 Misc. 579, 274 N.Y.S. 41.

Crossed *Check*

A check crossed with two lines, between which are either the name of a bank or the words "and company," in full or abbreviated. In the former case, the banker on whom it is drawn must not pay the money for the check to any other than the banker named; in the latter case, he must not pay it to any other than a banker. 2 Steph.Comm. 118, note *c.* And see 7 Exch. 389; [19031 A.C. 240; Farmers' Bank v. Johnson, King & Co., 134 Ga. 486, 68 S.E. 85, 30 L.R.A.,N.S., 697.

*Forged Check*

A check on which the maker's name is forged-not one which has forged indorsements. Kleinman v. Chase Nat. Bank of City of New York, .124 Misc. 173, 207 N.Y.S. 191, 193. See, also, International Union Bank v. National Surety Co., 245 N.Y. 368, 157 N.E. 269, 270. A check which is created as a result of a criminal act of forgery. Samples v. Milton County Bank, 34 Ga.App. 248, 129 S.E. 170.

*Memorandum Check*

A check given by a borrower to a lender, for the amount of a short loan, with the understanding that it is not to be presented at the bank, but will be redeemed by the maker himself when the loan falls due. This understanding is evidenced by writing the word *"Mem."* on the check. This is not unusual among merchants. See U. S. v. Isham, 17 Wall. 502, 21 L.Ed. 728; Franklin Bank v. Freeman, 16 Pick., Mass., 539; Story, Pr.Notes § 499.

*Traveler's Check*

See that title.

CHECK-BOOK, A book containing blank checks on a particular bank or banker.

CHECK-OFF SYSTEM. Deduction by employer from pay of employees of sums and payment of such sums to union. Pacific Mills v. Textile Workers' Union of America, Local No. 254, 197 S.C. 330, 15 S.E.2d 134, 136, 135 A.L.R. 497; Local 60 of Industrial Union of Marine and Shipbuilding Workers of America v. Welin Davit and Boat Corporation, 133 N.J.Eq. 551, 33 A.2d 708, 709; Borderland Coal Corporation v. International Organization of United Mine Workers of America, D. C.Ind., 275 F. 871, 873.

CHECK-ROLL. In English law. A list or book, containing the names of such as are attendants on, or in the pay of, the queen or other great personages, as their household servants.

CHECKER. The old Scotch form of exchequer.

CHECKERBOARD SYSTEM. This term, with reference to entries on lands, means one entry built on another, and a third on the second. Sequatchie & South Pittsburg Coal & Iron Co. v. Tennessee Coal, Iron & R. Co., 131 Tenn, 221, 174 S.W. 1122.

CHEFE, In Anglo-Norman law. Were or weregild; the price of the head or person, *(capitis pretium.)*

CHEMERAGE. In old French law. The privilege or prerogative of the eldest. A provincial term derived from *chemier, (q. v.)* Guyot, Inst.

CHEMIER. In old French law. The eldest born. A term used in Poitou and other places. Guyot, Inst.

CHEMIN. Fr. The road wherein every man goes; the king's highway. Called in law Latin via *regia.* Termes de la Ley; Cowell; Spelman, Gloss.

CHEMIS. In old Scotch law. A chief dwelling or mansion house.

CHEQUE. A variant of check (q. v.).

CHEROKEE NATION. One of the civilized Indian tribes. See Indians; Indian Tribe.

CHEVAGE. A sum of money paid by villeins to their lords in acknowledgment of their bondage.

It was exacted for permission to marry, and also permission to remain without the dominion of the lord. When paid to the *king,* It was called subjection. *Termes de la Ley;* Co.Litt. 140 a;, Spelman, Gloss.

*Chevage* seems also to have been used for a sum of money yearly given to a man of power for his countenance and protection as a chief or leader. Termes de la Ley; Cowell.

CHEVANTIA. In old records. A loan or advance of money upon credit. Cowell.

CHEVISANCE. An agreement or composition; an end or order set down between a creditor or debtor; an indirect gain in point of usury, etc.; also an unlawful bargain or contract. Wharton.

CHEVITLE. In old records. Pieces of ground, or *heads* at the end of plowed lands. Cowell.

CHEZE. A homestead or homesfall which is accessory to a house.

CHICANE. Swindling; shrewd cunning. The use of tricks and artifice.

CHICKASAW NATION. One of the civilized Indian tribes. See Indians; Indian Tribe.

CHIEF. One who is put above the rest. Principal; leading; head; eminent in power or importance; the best or most important or valuable of several; paramount; of leading importance.

*Declaration in chief* is a declaration for the principal cause of action. 1 Tidd, Pr. 419.

*Examination in chief* is the first examination of a witness by the party who produces him. 1 Greenl.Ev. § 445.

*Tenant in chief.* See "Chief, tenant in," *infra.*

CHIEF BARON. The presiding judge of the English court of exchequer; answering to the chief justice of other courts. 3 Bl.Comm. 44; 3 Steph. Comm. 401.

CHIEF CLERK. The principal clerical officer of a bureau or department, who is generally charged, subject to the direction of his superior officer, with the superintendence of the administration of the business of the office.

CHIEF .JUDGE. In some states, the presiding judge, as in the New York Court of Appeals and the Maryland Court of Appeals. The term is also used in 1 Tyler (Vt.) with "assistant" judge for the puisne. It is likewise applied to the judge of the London bankruptcy court. In general, the term is equivalent to "presiding justice" or "presiding magistrate." Bean v. Loryea, 81 Cal. 151, 22 P. 513.

CHIEF JUSTICE. The presiding, eldest, or principal judge of a court of justice.

CHIEF JUSTICE OF ENGLAND. The presiding judge in the king's bench division of the high court of justice, and, in the absence of the lord chancellor, president of the high court, and also an *ex officio* judge of the court of appeals. The full title is "Lord Chief Justice of England."

CHIEF JUSTICE OF THE COMMON PLEAS. In England. The presiding judge in the court of common pleas, and afterwards in the common pleas division of the high court of justice, and one of the *ex officio* judges of the high court of appeal.

CHIEF JUSTICIAR. In old English law. A high judicial officer and special magistrate, who presided over the *aula regis* of the Norman kings, and who was also the principal minister of state, the second man in the kingdom, and, by virtue of his office, guardian of the realm in the king's absence. 3 Bl.Comm. 38.

CHIEF LORD. The immediate lord of the fee, to whom the tenants were directly and personally responsible. Burton, R.P. 317.

CHIEF MAGISTRATE. The head of the executive department of government of a nation, state, or municipal corporation. McIntire v. Ward, 3 Yeates, Pa., 424.

CHIEF OFFICE. Office of paramount importance or the leading office. City of Newark v. New Jersey Inv. Co., 18 N.J.Misc. 182, 11 A.2d 730, 731.

CHIEF PLEDGE. The borsholder, or chief of the borough. Spelman.

CHIEF RENTS. In English law. Were the annual payments of freeholders of manors; and were also called "quit-rents," because by paying them the tenant was freed from all other rents or services. 2 Bl.Comm. 42.

CHIEF, TENANT IN. In English feudal law. All the land in the kingdom was supposed to be holden mediately or immediately of the king, who was styled the "Lord Paramount," or "Lord Above All;" and those that held immediately under him, in right of his crown and dignity, were called his tenants *"in capite"* or "in chief," which was the most honorable species of tenure, but at the same time subjected the tenant to greater and more burdensome services than inferior tenures did. Brown. One who held directly of the king. 1 Washb.R.P. *19.

CHIEFRIE. In feudal law. A small rent paid to the lord paramount.

CHILD. See Children.

CHILDREN. Progeny

Child of tender age or years

Such a child must be less than 14 years old. Barnhill's Adm'r v. Mt. Morgan Coal Co., D.C.Ky., 215 F. 608, 610. A minor more than 15 years of age is not included within the meaning of the term. Paulk & Fossil v. Lee, 31 Ga.App. 629, 121 S.E. 845.

### Child's Part

A "child's part," which a widow, by statute in some states, is entitled to take in lieu of dower or the provision made for her by will, is a full share to which a child of the decedent would be entitled, subject to the debts of the estate and the cost of administration up to and including distribution. Benedict v. Wilmarth, 46 Fla. 535, 35 So. 84.

### Illegitimate Child

A bastard *(q. v.).*

### Legitimate Child

One born in lawful wedlock.

### Natural Child

A bastard *(q. .v.);* a child born out of lawful wedlock. But in a statute declaring that adopted shall have all the rights of "natural" children, the word "natural" was used in the sense of "legitimate." Barns v. Allen, 9 Am.Law Reg., 0.S., 747. In Louisiana. Illegitimate children who have been acknowledged by the father. Civ.Code La. art. 202. In the civil law. A child by natural relation *or* procreation; a child by birth, as distinguished from a child by adoption. Inst. 1, 11, pr.; Id. 3, 1, 2; Id. 3, 8 pr. See, also, Conner v. Parsley, 192 Ky. 827, 234 S.W. 972, 974; Middletown Trust Co. v. Gaffey, 96 Conn. 61, 112 A. 689, 691.

A child by concubinage, in contradistinction to a child by marriage. Cod. 5, 27.

### Posthumous Child

One born after the father's death.

### Quasi Posthumous Child

In the civil law. One who, born during the life of his grandfather, or other male ascendant, was not his heir at the time he made his testament, but who by the death of his father became his heir in his life-time. Inst. 2, 13, 2; Dig. 28, 3, 13.

The word "child" in statutes often means either child or children. Cunningham v. Dunn, 84 W.Va. 593, 100 S.E. 410, 411. See Children.

"Children" is ordinarily a word of description, limited to persons standing in the same relation, and has the same effect as if all the names were given. Rowley v. Currie, 94 N.J.Eq. 606, 120 A. 653, 656.

The words "child or children," in their usual sense, are words of purchase. Phillips v. Mercantile Trust Co. of Baltimore, 195 A. 394, 395, 173 Md. 290; Kelly v. Kelly, 176 Ark. 548, 3 S.W.2d 305; Deener v. Watkins, 191 Ark. 776, 87 S.W.2d 994, 995; they may, however, be used as words of limitation, Bonds v. Hutchison, 199 S.C. 197, 18 S. E-2d 661, 662, 663; Crawford v. Withrow, 314 Pa. 497, 171 A. 894, 895; Young v. Munsey Trust Co., 72 App.D.C. 73, 111 F.2d 514, 515.

The terms "child" .or "children" may include or apply to :

Adopted children, Dyer v. Lane, 202 Ark. 571, 151 S.W.2d 678, 680; Ex parte Cline, 213 Ala. 599, 105 So. 686, 687., Ryan v. Foreman, 262 Ill. 175, 104 N.E. 189; but some decisions hold that adapted children are not included in absence of manifest intention, Savells v. Brown's Guardian, 187 Ky. 134, 218 S.W. 462, 463; Melek v. Curators of University of Missouri, 213 Mo.App. 572, 250 S.W. 614, 615; for cases holding that "child" or "children" does not include adopted children, see Everitt v. LaSpeyre, 195 Ga. 377, 24 S.E.2d 381, 383; Moffet v. Cash, 346 Ill. 287, 178 N. E. 658, 659; In re Sandford's Estate, 160 Misc. 898, 290 N. Y.S. 959, 960; Adult child, Mindlin v. Consolidated Taxpayers Mut. Ins. Co., 173 Misc. 961, 19 N.Y.S.2d 340, 342; State ex rel. Buerk v. Calhoun, 330 Mo. 1172, 52 S.W.2d 742, 83 A.L.R. 1393; after-born child, Westport Paper-Board Co. v. Staples, 127 Conn. 115, 15 A.2d 1, 5; contra, Albers v. Donovan, 371 Ill. 458, 21 N.E.2d 563, 565; all lineal descendants. Boston Safe Deposit & Trust Co. v. Park, 307 Mass. 255, 29 N.E.2d 977, 980; blood relations. In re Fletcher's Estate, 103 Pa.Super. 69, 157 A. 810, 811; child by second marriage, Nelson v. Estill, 175 Ga. 526, 165 S.E. 820, 823; child that would inherit from an intestate parent, In re Gossett's Estate, 46 N.M. 344, 129 P.2d 56, 58, 60, 142 A.L.R. 1441; child en ventre sa mere, Valley Nat. Bank v. Hartford Accident & Indemnity Co., 57 Ariz. 276, 113 P.2d 359, 361: Thomson v. Elliott', 152 Misc. 188, 273 N.Y.S. 898; children born in wedlock. Bell v. Phyn, 7 Ves. 458; In re Silva's Estate, 32 Ariz. 573, 261 P. 40, 41. Children by former marriage, In re Freisinger's Will, 263 App. Div. 970, 33 N.Y.S.2d 196, 197; children by various marriages of parent named, McMullen v. Block, Tex.Civ.App., 168 S.W.2d 667, 670; children in first degree. In re Brown's Estate, 133 Misc. 587, 233 N.Y.S. 426, 430; Children regardless of age, Citizens' Bank of Lancaster v. Foglesong, 326 Mo. 581, 31 S.W.2d 778, 783; correlative of "parent;" descendant or descendants of first degree, Benners v. First Nat. Bank of Birmingham, 247 Ala. 74, 22 So.2d 435, 442; first degree descendants, Spencer v. Title Guarantee Loan & Trust Co., 222 Ala. 485, 132 So. 730, 731; first generation of offspring. New York Life Ins. Co. v. Beebe, D.C.Md., 57 F.Supp. 754, 757.

Grandchildren, Holbrook v. Shepard, 245 N.Y. 618, 157 N. E. 882; Tucker v. Tucker, 259 Ky. 361, 82 S.W.2d 458, 459, 460; Cherokee Brick Co. v. Bishop, 156 Tenn. 168, 299 S. W. 770; but, ordinarily, grandchildren are not included, Lowrey v. Le Fiore, 48 Okl. 235, 149 P. 1112, 1114, Ann. Cas.1918E, 1001; Sabit v. Safe Deposit & Trust Co. of Baltimore, 184 Md. 24, 40 A.2d 231, 238; In re Blodgett's Will, 250 App.Div. 324, 294 N.Y.S. 358, 366; as used in deeds or wills especially, the term "children" will not be construed to mean grandchildren, unless a strong case of intention or context requires it. Greenfield v. Lauritson, 306 Ill. 279, 137 N.E. 818, 819; Davis v. Mitchell, Tenn. App.,. 178 S.W.2d 889, 904; In re Reed's Estate, 342 Pa. 54, 19 A.2d 365, 366.

Heirs or heirs of the body, Beall v. Beall, 331 Ill. 28, 162 N.E. 152, 154 ; Schwarz v. Rabe, 129 Kan. 430, 283 P. 642, 643 ; Conover v. Code, 184 Ind. 604, 112 N.E. 7, 12 ; Darragh v. Barmore, Tex.Com.App., 242 S.W. 714, 718; but the intention to use "children" in the sense of "heirs" must be made clear. Farrell v. Faries, Del., 22 A.2d 380, 384, 385. So, too, the term "heirs" may mean "children," Albers v. Donovan, 371 Ill. 458, 21' N.E.2d 563. 565; Lane v. Citizen's & Southern Nat. Bank, 195 Ga. 828, 25 S.E.2d 800, 804; but the intention to so use the word must be manifest. Welles v. Pape, 63 Ohio App. 432, 27 N.E.2d 169, 172; For cases holding that "heirs" does not mean "children" see Erwin Nat. Bank v. Riddle, 18 Tenn.App. 561, 79 S.W.2d 1032, 1038; Triplett v. Triplett, 332 Mo. 870, 60 S.W.2d 13, 15.

Illegitimate children, State ex rel. Herbert v. Hocking Valley Mining Co., 73 Ohio App. 483, 57 N.E.2d 236, 238; In re Anonymous, 165 Misc. 62, 300 N.Y.S. 292; but other decisions have held that the terms exclude illegitimate children, Bank of Montclair v. McCutcheon, 107 N.J.Eq. 564, 152 A. 379, 380; Jacobs v. United States, C.C.A.La., 112 F. 2d 51; Gee v. Commonwealth, 263 Ky. 808, 94 S.W.2d 17, 19; illegitimate children that have been acknowledged or adopted, Weyerhaeuser Timber Co. v. Marshall, C.C.A. Wash., 102 F.2d 78, 81; Jenkins v. City of Los Angeles, 60 Cal.App.2d 50, 40 P.2d 45, 46; Hastings v. Rathbone, 194 Iowa, 177, 188 N.W. 960, 962, 23 A.L.R. 392; immediate offspring or progeny, McQueen v. Stephens, Tex.Civ.App., 100 S.W.2d 1053, 1055; In re Conant's Estate, 144 Misc. 743, 259 N.Y.S. 885; infant offspring. In re Berg's Estate, 72 N. D. 52, 4 N.W.2d 575, 580, 140 A.L.R. 1312; Issue, Woodley v. Howse, 133 Kan. 639, 3 P.2d 475, 476; Hodge v. Lovell's Trustee, 262 Ky. 509, 90 S.W.2d 683, 686. So too, "issue" may mean "children." Pierson v. Jones, 108 N.J.Eq. 453, 155 A. 541, 542; In re Morningstar's Will, 143 Misc. 620, 257 N.Y.S. 240, 249. Legitimate children, Dunlavy v. Lowrie, 372 Ill. 622, 25 N.E.2d 67 *71:* Town of Plymouth v. Hey, 285 Mass. 357, 189 N.E. 100, 101; Middleton v. Luckenbach S. S. Co., C.C.A.N.Y., 70 F.2d 326, 328;

legitimated child, Brown v. Shwinogee, 128 Okl. 149, 261 P. 920, 921; living children, In re Schuette's Estate, 138 Neb. 568, 293 N.W. 421, 422; Ward v. Ward, 176 Ga. 849, 169 S.E. 120, 121, 122; male or female, Turner v. Metropolitan Life Ins. Co., 56 Cal.App.2d 862, 133 P.2d 859, 861; Curtis v. Safe Deposit & Trust Co. of Baltimore, 178 Md. 360, 13 A.2d 546, 548; married child, Killian *v.* Burnham, 191 Okl. 248, 130 P.2d 538, 539; In re Drye, 250 Mich. 210, 229 N.W. 623, 625; minor or minors. Walsh v. Walsh, Cal.App., 108 P.2d 763, 764; State v. Flath, 59 N.D. 121, 228 N.W. 847, 849; "natural-born children." In re Corr's Estate, 338 Pa. 337, 12 A.2d 76, 78; natural offspring of parentage, In re Wait's Estate, Sur., 42 N.Y.S.2d 735, 738, 739; offspring of either sex and of any age, Morris v. Williams, Tex.Civ.App., 92 S.W.2d 541, 544; opposite of "adult," Miller v. Finegan, 26 Fla. 29, 7 So. 140, 6 L.R.A. 813; Potter v. Golden Rule Grocery Co., 169 Tenn. 240, 84 S.W.2d 364, 365; person under age of 18 years, State v. Flath, 59 N. D. 121, 228 N.W. 847, 848; person under age of majority, Wade v. State, 24 Ala.App. 176, 132 So. 71, 72; posthumous child, Travelers Ins. Co. v. Dudley, 180 Tenn. 191, 173 S.W.2d 142, 144; posthumous, illegitimate child, Morgan v. Susino Const. Co., 130 N.J.L. 418, 33 A.2d 607, 610.

Contra, Gierak v. Lehigh & Wilkes-Barre Coal Co., 101 Pa.Super. 397, 399; Staker v. Industrial Commission of Ohio, 127 Ohio St. 13, 186 N.E. 616; quick child, Guiffrida v. State, 61 Ga.App. 595, 7 S.E.2d 34, 35; sons and daughters, Kimberlin v. Hicks, 150 Kan. 449. 94 P.2d 335, 340; Stepchildren, Newark Paving Co. v. Klotz, 85 N.J.Law, 432, 91 A. 91, 92; Travelers Ins. Co. v. E. I. Du Pont De Nemours & Co., Del., 1 Terry 285, 9 A.2d 88, 91.

CHILDWIT, In Saxon law. The right which a lord had of taking a fine of his bondwoman gotten with child without his license. Termes de la Ley.

The custom in Essex county, England, whereby every reputed father of a bastard child was obliged to pay a small fine to the lord. Cowell.

CHILLING A SALE. The act of bidders or others who combine or conspire to suppress fair competition at a sale, for the purpose of acquiring the property at -less than its fair value. Vette v. Hackman, 292 Mo. 138, 237 S.W. 802, 805.

CHILTERN HUNDREDS. In English law. The offices of steward or bailiff of His Majesty's three Chiltern Hundreds of Stoke, Desborough, and Bonenham; or the steward of the Manor of Northsted. Chiltern Hundreds is an appointment under the hand and seal of the Chancellor of the Exchequer. May, Parl.Pr. 642.

The stewardship of the Chiltern Hundreds is a nominal office in the gift of the crown, usually accepted by members of the house of commons desirous of vacating their seats. By law a member once duly elected to parliament is compelled to discharge the duties of the trust conferred upon him, and is not enabled at will to resign it. But by statute, if any member accepts any office of profit from the crown, (except officers in the army or navy accepting a new commission,) his seat is vacated. If, therefore, any member wishes to retire from the representation of the county or borough by *which* he was sent to parliament, he applies to the lords of the treasury for the stewardship of one of the Chiltern Hundreds, which having received, and thereby accomplished his purpose, he again resigns the office. Brown.

CHIMIN. In old English law. A road, way, highway. It is either the king's highway *(chiminus regis)* or a private way. The first is that over which the subjects of the realm, and all others under the protection of the crown, have free liberty to pass, though the property in the soil itself belong to some private individual; the last is that in which one person or more have liberty to pass over the land of another, by prescription or charter. Wharton. See Chemin.

CHDIINAGE. A toll for passing on a way through a forest; called in the civil law *"pedagium."* Cowell. See Co.Litt. 56 a; Spelman, Gloss.; Termes de la Ley; Baldwin's Ed. of Britton, 63.

CIIIMINUS. The way by which the king and all his subjects and all under his protection have a right to pass, though the property of the soil of each side where the way lieth may belong to a private man. Cowell.

CHIMNEY MONEY, or HEARTH MONEY. A tax upon chimneys or hearth; an ancient tax or duty upon houses in England, now repealed. See Hearth Money; Fuage.

CHIPPINGAVEL. In old English law. A tax upon trade; a toll imposed upon traffic, or upon goods brought to a place to be sold; a toll for buying and selling. Whishaw; Blount.

CHIRGEMOT, CHIRCHGEMOT. (Also spelled Chirgemote, Chirchgemote, Circgemote, Kirkmote.) In Saxon law. An ecclesiastical assembly or court. Spelman. A synod or meeting in a church or vestry. 4 Inst. 321; Blount; Spelman, Gloss.; Hen. I. cc. 4, 8; Cunningh.Law Dict.

CHIROGRAPH. In Civil and Canon law. An instrument written out and subscribed by the hand of the party who made it, whether the king or a private person. Du Cange; Cowell.

In old English law. A deed or indenture; also the last part of a fine of land, called more commonly, perhaps, the foot of the fine. Cruise, Dig. t. 35, c. 2, s. 52.

An instrument of gift or conveyance attested by the subscription and crosses of the witnesses, which was in Saxon times called *"chirographum,"* and which, being somewhat changed in form and manner by the Normans, was by them styled *"charta."* Anciently when they made a chirograph or deed which required a counterpart, as we call it, they engrossed it twice upon one piece of parchment contrariwise, leaving a space between, in which they wrote in capital letters the word "chirograph," and then cut the parchment in two through the middle of the word, giving a part to each party. Cowell; 2 Bla.Comm. 296. See, also, Charta cyrographata.

In Scotch law. A written voucher for a debt. Bell.

CHIROGRAPHA. In Roman law. Writings emanating from a single party, the debtor.

CHIROGRAPHER OF FINES. In English law. The title of the officer of the common pleas who engrossed fines in that court so as to be acknowledged into a perpetual record. Cowell.

CHIROGRAPHUM. In Roman law. A handwriting; that which was written with a person's own hand. An obligation which a person wrote or subscribed with his own hand; an acknowledgment of debt, as of money received, with a promise to repay. An evidence or voucher of debt; a security for debt. Dig. 26, 7, 57, pr. A right of action for debt.

CHIROGRAPHUM APUD DEBITOREM REPERTUM PRIESUMITUR SOLUTUM. An evidence of debt found in the debtor's possession is presumed to be paid. Halk.Max. 20; Bell, Dict. See 14 M. & W. 379.

CHIROGRAPHUM NON EXTANS PR4ESUMITUR SOLUTUM. An evidence of debt not existing is presumed to have been discharged. Tray. Lat.Max. 73.

CHIROPODIST. One who treats diseases or malformations of the hands or feet, especially a surgeon for the feet, hands, and nails; a cutter or extractor of corns and callosities. State v. Armstrong, 38 Idaho 493, 225 P. 491, 33 A.L.R. 835.

CHIROPODY. The art of removing corns and callouses. State v. Armstrong, 38 Idaho 493, 225 P. 491, 493, 33 A.L.R. 835.

CHIROPRACTIC, CHIROPRACTICS. A system of healing that treats disease by manipulation of the spinal column. Joyner v. State, 181 Miss. 245, 179 So. 573, 575, 115 A.L.R. 954. A system of therapeutic treatment, through adjusting of articulations of human body, particularly those of the spine. Walkenhorst v. Kesler, 92 Utah 312, 67 P.2d 654, 662. The specific science that removes pressure on the nerves by the adjustment of the spinal vertebrae. State v. Boston, 226 Iowa 429, 284 N.W. 143, 144.

CHIROPRACTOR. One who practices the system of chiropractic. Cummings v. State, 214 Ala. 209, 106 So. 852, 854. One professing a system of manipulations which aims to cure disease by the mechanical restoration of displaced or subluxated bones, especially the vertebra, to their normal relation. Board of Medical Examiners of State of Utah v. Freenor, 47 Utah, 430, 154 P. 941, 942, Ann. Cas.1917E, 1156.

CHIRURGEON. The ancient denomination of a surgeon.

CHIVALRY. In feudal law. Knight-service Tenure in chivalry was the same as tenure by knight-service. 2 Bl.Comm. 61, 62.

CHIVALRY, COURT OF. See Court of Chivalry.

CHIVALRY, TENURE BY. Tenure by knight-service. Co.Litt.

CHOATE LIEN. Lien which is perfected so that nothing more need be done to make it enforcible. Identity of lienor, property subject to lien and amount of lien are all established. Walker v. Paramount Engineering Co., C.A.Mich., 353 F.2d 445, 449; U. S. v. City of New Britain, Conn., Conn., 74 S.Ct. 367, 369, 347 U.S. 81, 98 L.Ed. 520. The lien must be definite and not mere ascertainable in the future by taking further steps. Gower v. State Tax Commission, 295 P.2d 162, 207 Or. 288.

CHOKE DAMP. A common name for carbonic acid;—so called from its extinguishing of flame and animal life. Wells' Adm'r v. Sutherland Coal &c Coke Co., 116 Va. 1003, 83 S.E. 384, 385.

CHOP-CHURCH. A word mentioned in 9 Hen. VI. c. 65, by the sense of which it was in those days a kind of trade, and by the judges declared to be lawful. But Brooke, in his abridgment, says it was only permissible by law. It was, without doubt, a nickname given to those who used to change benefices, as to "chop and change" is a common expression. Jacob.

CHOPS. The mouth of a harbor. Pub.St.Mass. 1882, p. 1288.

CHORAL. In ancient times a person admitted to sit and worship in the choir; a chorister.

CHOREPISCOPUS. In old European law. A rural bishop, or bishop's vicar. Spelman; Cowell.

CHOSE. Fr. A thing; an article of personal property. A chose is a chattel personal, (Williams, Pers.Prop. 4,) and is either in action or in possession. See Chose in Action and Chose in Possession, *infra.*

Chose local. A local thing; a thing annexed to a place, as a mill. Kitchin, fol. 18; Cowell; Blount.

Chose transitory. A thing which is movable, and may be taken away or carried from place to place. Cowell; Blount.

CHOSE IN ACTION. A personal right not reduced into possession, but recoverable by a suit at law. North Carolina Bank & Trust Co. v. Williams, 160 S.E. 484, 485, 201 N.C. 464. A right to personal things of which the owner has not the possession, but merely a right of action for their possession. 2 Bl.Comm. 389, 397; 1 Chit.Pr. 99. The phrase includes all personal chattels which are not in possession; 11 App.Cas. 440; Powers v. Fisher, 279 Mich. 442; 272 N.W. 737, 739; and all property in action which depends entirely on contracts express or implied; Castle v. Castle, C.C.A. Hawaii, 267 F. 521, 523. A right to receive or recover a debt, demand, or damages on a cause of action *ex contractu* or for a tort or omission of a duty. Comyns, Dig. *Biens.* Moran v. Adkerson, 168 Tenn. 372, 79 S.W.2d 44, 45. Pickering v. Peskind, 43 Ohio App. 401, 183 N.E. 301, 303. A right to recover by suit a personal chattel. Garford Motor Truck Co. v. Buckson, 4 W.W.Harr. 103, 143 A. 410, 411. Assignable rights of action ex contractu and perhaps ex delicto. Coty v. Cogswell, 100 Mont. 496, 50 P.2d 249, 250. Personalty to which the owner has a right of possession in future, or a right of immediate possession, wrongfully withheld. And see Tumy v. Mayer, 289 Ill. 458, 124 N.E. 661, 662.

CHOSE IN POSSESSION. A personal thing of which one has possession. A thing in possession, as distinguished from a thing in action. Vawter v. Griffin, 40 Ind. 601. See Chose in Action. Taxes and customs, if paid, are a chose in possession; if unpaid, a chose in' action. 2 Bl.Comm. 408.

CHOSEN FREEHOLDERS. Under the municipal organization of the state of New Jersey, each

county has a board of officers, called by this name, composed of representatives from the cities and townships within its limits, and charged with administering the revenues of the county. They correspond to the "county commissioners" or "supervisors" in other states.

CHOUT. In Hindu law. A fourth, a fourth part of the sum in litigation. The "Mahratta chout" is a fourth of the revenues exacted as tribute by the Mahrattas.

CHOW SUM. A Chinese name for ginseng roots which have been dried and treated with sugar and honey, such treatment having the purpose and effect of enhancing their value commercially but not therapeutically. Tong & Co. v. U. S., 12 Ct. Cust.App. 32, 33.

CHRENECRUDA. Under the Salic law. This was a ceremony performed by a person who was too poor to pay his debt or fine, whereby he applied to a rich relative to pay it for him. It consisted (after certain preliminaries) in throwing green herbs upon the party, the effect of which was to bind him to pay the whole demand.

CHRISTIAN. Pertaining to Jesus Christ or the religion founded by him; professing Christianity. As a noun, it signifies one who accepts and professes to live by the doctrines and principles of the Christian religion; it does not include Mohammedans, Jews, pagans, or infidels. State v. Buswell, 40 Neb. 158, 58 N.W. 728, 24 L.R.A. 68. One who believes or professes or is assumed to believe in Jesus Christ, and the truth as taught by Him. Conway v. Third Nat. Bank & Trust Co., 118 N.J.Eq. 61, 177 A. 113, 116.

CHRISTIAN NAME. The baptismal name as distinct from the surname. Stratton v. Foster, 11 Me. 467. The name which is given one after his birth or at baptism, or is afterward assumed by him in addition to his family name. Badger Lumber Co. v. Collinson, 97 Kan. 791, 156 P. 724, 725.

A Christian name may consist of a single letter. Wharton; People v. Reilly, 257 Ill. 538, 101 N.E. 54, Ann.Cas. 1914A, 1112. There is no presumption that letters are not themselves Christian names, and where a letter or letters appear before a surname they are treated, in the absence of any showing to the contrary, as the Christian name. Riley v. Litchfield, 168 Iowa, 187, 150 N.W. 81, 82, Ann.Cas. 1917B, 172.

CHRISTIANITATIS CURIA. The court Christian. An ecclesiastical court, as opposed to a civil or lay tribunal. Cowell. See, also, Court Christian.

CHRISTIANITY. The religion founded and established by Jesus Christ. Hale v. Everett, 53 N. H. 9, 54, 16 Am.Rep. 82; People v. Ruggles, 8 Johns. (N.Y.) 297, 5 Am.Dec. 335.

CHRISTMAS DAY. A festival of the Christian church, observed on the 25th of December, in memory of the birth of Jesus Christ.

CHROME YELLOW. A metal largely used as a yellow pigment. It is an active poison. U. S. v. R. C. Boeckel & Co., C.C.A.Mass., 221 F. 885, 888.

CHROMO. A chromolithograph;—a picture produced from drawings on stones, each color being represented by a different stone. . Stecher Lithographic Co. v. Dunston Lithograph Co., D.C.N.Y., 233 F. 601, 602.

CHRONIC. With reference to diseases, of long duration, or characterized by slowly progressive symptoms; deep-seated and obstinate, or threatening a long continuance;—distinguished from acute. Golden v. Lerch Bros., 211 Minn. 30, 300 N.W. 207, 211.

CHURCH. In its most general sense, the religious society founded and established by Jesus Christ, to receive, preserve, and propagate his doctrines and ordinances.

It may also mean a body of communicants gathered into church order, Stebbins v. Jennings, 10 Pick. (Mass.) 193; body or community of Christians, united under one form of government by the profession of the same faith, and the observance of the same ritual and ceremonies, McNeilly v. First Presbyterian Church in Brookline, 243 *Mass.* 331, 137 N.E. 691, 694; building, Combined Congregations of District of Columbia v. Dent, 140 F.2d 9, 10, 78 U.S.App. D.C. 254; congregation, Trustees of Pencader Presbyterian Church in Pencader Hundred v. Gibson, Del., 22 A.2d 782, 787, 788; organization for religious purposes, Williams v. Williams, 215 N.C. 739, 3 S.E.2d 334, 338; place where persons regularly assemble for worship, Stubbs v. Texas Liquor Control Board, Tex.Civ.App., 166 S.W.2d 178, 180; religious society or body, In re Werner's Will, Sur., 181 N. Y.S. 433, 434; society of persons who profess the Christian religion, Church of the Holy Faith v. State Tax Commission, 39 N.M. 403, 48 P.2d 777, 784.

In English ecclesiastical law. An institution established by the law of the land in reference to religion. 3 Steph. Comm. 54. The word "church" *is* said to mean, in strictness, not the material fabric, but the cure of souls and the right of tithes. 1 Mod. 201.

A congregational church is a voluntary association of Christians united for discipline and worship, connected with, and forming a part of, some religious society, having a legal existence. Anderson v. Brock, 3 Me. 248.

### Church Building Acts

Statutes passed in England in and since the year 1818, to extend the accommodation afforded by the national church. 3 Steph.Comm. 152-164.

### Church Discipline Act

The statute 3 & 4 Viet. c. 86, containing regulations for trying clerks in holy orders charged with offenses against ecclesiastical law, and for enforcing sentences pronounced in such cases. Phillim. Ecc.Law, 1314.

### Church of England

A distinct branch of Christ's church, it is also an institution of the state of which the sovereign is the supreme head. Wharton. Pawlet v. Clark, 9 Cranch 292, 3 L.Ed. 735.

### Church Property

Within constitutional exemption from taxation, it means property used for religious worship and instruction. Church of the Holy Faith v. State Tax Commission, 39 N.M. 403, 48 P.2d 777, 784.

Church Rate

In English law. A sum assessed for the repair of parochial churches by the representatives of the parishioners in vestry assembled. Wharton.

Church Reeve

A church warden; an overseer of a church. Now obsolete. Cowell.

Church-Scot

In old English law. Customary obligations paid to the parish priest; from which duties the religious sometimes purchased an exemption for themselves and their tenants.

Church Wardens

A species of ecclesiastical officers who are intrusted with the care and guardianship of the church building and property. See 3 Steph.Comm. 90; 1 BIa.Comm. 394; Cowell; Terrett v. Taylor, 9 Cranch, 43, 3 L.Ed. 650.

Church-Yard

See Cemetery.

Community Church

A name signifying a federation of churches retaining their separate identity and distinctive doctrines. Christian Church of Vacaville v. Crystal, 78 Cal.App. 1, 247 P. 605, 608.

CHURCHESSET. In old English law. A certain portion or measure of wheat, anciently paid to the church on St. Martin's day; and which, according to Fleta, was paid as well in the time of the Britons as of the English. Fleta, lib. 1, c. 47, § 28.

CHURL. In Saxon law. A freeman of inferior rank, chiefly employed in husbandry. 1 Reeve, Eng.Law, 5. A tenant at will of free condition, who held land from a thane, on condition of rents and services. Cowell. See Ceorl.

CI. Fr. So; here. Ci *Dieiu Vous cycle,* so help you God. Ci *devant,* heretofore. Ci *bien,* as well.

CIBARIA. Lat. In the civil law. Food; victuals. Dig. 34, 1.

CICATRIX. In medical jurisprudence. A scar; the mark left in the flesh or skin after the healing of a wound, and having the appearance of a seam or of a ridge of flesh.

CIDER. Formerly, any liquor made of fruit juices; now, the juice of apples either before or after fermentation. People v. Tretneck, 22 N.Y.S. 2d 720, 721, 175 Misc. 41; People v. McCoy, 217 Mich. 575, 187 N.W. 338.

Cider vinegar. Vinegar made from apple cider. People v. Douglas Packing Co., 194 N.Y.S. 633, 635, 118 Misc. 775.

Hard cider. Fermented cider, a strong, spirituous, and intoxicating drink. Monroe Cider Vinegar & Fruit Co. v. Riordan, D.C.N.Y., 274 F. 736, 737; People v. Emmons, 144 N.W. 479, 481, 178 Mich. 126, Ann.Cas.1915D, 425.

Sweet cider. Cider before fermentation, or cider in which fermentation has been prevented—cider not yet become hard. U. S. v. Dodson, D.C.Cal., 268 F. 397, 403. A nonalcoholic beverage composed of the expressed juice of apples. Monroe Cider Vinegar & Fruit Co. v. Riordan, C.C.A.N.Y., 280 F. 624, 626.

CINQUE PORTS. Certain important ports or havens on the south-east coast of England, towards France. 3 Bl.Comm. 79. Their representatives in parliament and inhabitants were termed barons. Brande; Cowell; Teanes de la Ley. And see Round, Feudal England 563.

The 18 & 19 Vict. c. 48, (amended by 20 & 21 Vict. c. 1,) abolished jurisdiction and authority of the lord warden of the Cinque Ports.

CIPHER. Ordinarily, a secret or disguised written communication, unintelligible to one without a key. As applied to telegrams, a "cipher" message is one that is unintelligible. Western Union Telegraph Co. v. Geo. F. Fish, Inc., 148 Md. 210, 128 A. 14, 16.

CIPPI. An old English law term for the stocks, an instrument in which the wrists or ankles of petty offenders were confined.

CIRCADA. A tribute anciently paid to the bishop or archbishop for visiting churches. Du Fresne.

CIRCA. Lat. About; around; a/so, concerning; with relation to. Commonly used before a given date when the exact time is not known; as, *circa* 1800. Abbreviated *circ.* or *c.*

CIRCAR. In Hindu law. Head of affairs; the state or government; a grand division of a province; a headman. A name used by Europeans in Bengal to denote the Hindu writer and accountant employed by themselves, or in the public offices. Wharton.

CIRCUIT. A division of the country, appointed for a particular judge to visit for the trial of causes or for the administration of justice. See 3 Bla. Comm. 58; State v. Mappus, 107 S.C. 345, 92 S.E. 1053.

Circuits, as the term is used in England, may be otherwise defined to be the periodical progresses of the judges of the superior courts of common law, through the several counties of England and Wales, for the purpose of administering civil and criminal justice. 3 Bla.Comm. 57; 3 Steph.Comm. 321.

CIRCUIT COURTS. Courts whose jurisdiction extends over several counties or districts, and of which terms are held in the various counties or districts to which their jurisdiction extends.

In several of the states, the name given to a tribunal, the territorial jurisdiction of which may comprise several counties or districts, and whose sessions are held in such counties or districts alternately. These courts usually have general orig-

inal jurisdiction. Renshaw v. Reynolds, 317 Mo. 484, 297 S.W. 374, 376.

The name of a former .system of courts of the United States, invested with general original jurisdiction of such matters and causes as are of Federal cognizance, except the matters specially delegated to the district courts. 1 Kent, Comm. 301-303.

CIRCUIT COURTS OF APPEALS. See Courts of Appeals.

CIRCUIT JUDGE. The judge of a circuit court. Crozier v. Lyons, 72 Iowa 401, 34 N.W. 186.

CIRCUIT JUSTICE. In federal law and practice. The justice of the supreme court who is allotted to a given circuit. 28 U.S.C.A. § 42.

CIRCUIT PAPER. In English practice. A paper containing a statement of the time and place at which the several assises will be held, and other statistical information connected with the assises. Holthouse.

CIRCUITUS EST EVITANDUS; ET BONI JUDICIS EST LITES DIRIMERE, NE LIS EX LITE ORIATUR. 5 Coke, 31. Circuity is to be avoided; and it is the duty of a good judge to determine litigations, lest one lawsuit arise out of another. Co.Litt. 384 a; Wing.Max. 179; Broom, Max. 343; 15 M. & W. 208; 5 Exch. 829.

CIRCUITY OF ACTION. A complex, indirect, or roundabout course of legal proceeding, making two or more actions necessary in order to effect that adjustment of rights between all the parties concerned in the transaction which, by a more di, rect course, might have been accomplished in • a single suit. Fellows v. Fellows, 4 Cow. (N.Y.) 682, 15 Am.Dec. 412.

CIRCULAR INSANITY. Maniac depressive psychosis. Turley v. Turley, 374 Ill, 571, 30 N.E.2d 64, 65.

CIRCULAR LETTER OF CREDIT. A letter authorizing one person to pay money or extend credit to another on the credit of the writer. Pines v. United States, C.C.A.Iowa, 123 F.2d 825, 828.

CIRCULAR NOTES. Instruments similar to "letters of credit." They are drawn by resident bankers upon their foreign correspondents, in favor of persons traveling abroad. Brown.

CIRCULATED. A thing is "circulated" when it passes, as from one person or place to another, or spreads, as a report or tale. Willard v. State, 129 Tex.Cr.R. 384, 87 S.W.2d 269, 270.

CIRCULATION. As used in statutes providing for taxes on the circulation of banks, this term includes all currency or circulating notes or bills, or certificates or bills intended to circulate as money. U. S. v. Wilson, 106 U.S. 620, 2 S.Ct. 85, 27 L. Ed. 310. As used in newspaper and magazine publishing businesses, a body of subscribers and an established advertising clientele. Meredith Pub. Co. v. Commissioner of Internal Revenue, C.C.A., 64 F.2d 890, 893. Reading of libelous document with defendant's consent in hearing of others. Myre v. State, 126 Tex.Cr.R. 157, 70 S.W.2d 428.

*Circulating medium.* This term is more comprehensive than the term "money," as it is the medium of exchanges, or purchases and sales, whether it be gold or silver coin or any other article.

CIRCULATORY HEATING SYSTEM. One in which the heating box, being outside the room to be heated, heats a body of air in passing over it, which body of air is then conducted to the room to be heated, thus indirectly accomplishing the result;—distinguished from a "radiating" or direct system, in which the heating body or box is in the room intended to be heated. Pelton v. Williams, C.C.A.Ohio, 235 F. 131, 132.

CIRCUMDUCTION. In Scotch law. A closing of the period for lodging papers, or doing any other act required in a cause. Paters. Comp,

CIRCUMDUCTION OF THE TERM. In Scotch practice. The sentence of a judge, declaring the time elapsed within which a proof ought to have been led, and precluding the party from bringing forward any further evidence. Bell.

CIRCUMFERENTIAL. Etymologically inclusive of spiral. See George W. Todd & Co. v. J. Whitaker Mfg, Co., D.C.Pa., 226 F. 791, 794.

CIRCUMSPECTE AGATIS. The title of a statute passed 13 Edw. I (1285) and so called from the Initial words of it, the object of which was to ascertain the boundaries of ecclesiastical jurisdiction in some particulars, or, in other words, to regulate the jurisdiction of the ecclesiastical and temporal. courts. 2 Reeve, Eng.Law, 215, 216. See, however, 2 Holdsw.Hist.E.L. 246. And see Articles of the clergy.

CIRCUMSTANCES. Attendant facts. Pope v. Reading Co., 304 Pa. 326, 156 A. 106, 109. The surroundings at the commission of an act.

The terms "circumstance" and "fact" are, in many applications, synonymous; but the true distinction of a circumstance is its *relative* character. "Any *fact may be a* circumstance with reference to any other fact." 1 Benth. Jud.Evid. 42, note; Id. 142. "Circumstances" are minor facts, Pulliam v. State, 196 Ga. 782, 28 S.E.2d 139, 147; related or accessory facts, occurrences or things which stand around, or about, which attend upon, which closely precede or follow, which surround , and accompany, which depend upon, or which support or qualify a principal fact or event, Salter v. State, 163 Ga. 80, 135 S.E. 408, 409.

As used in a statute for an allowance for the wife in a divorce action, having regard to the "circumstances" of the parties, it includes practically everything which has *a* legitimate bearing on present and prospective matters relating to the lives of both parties. Lamborn v. Lamborn, 80 Cal. App. 494, 251 P. 943, 945.

The "circumstances of the transaction itself," as used in the doctrine of dying declarations, are the circumstances or facts leading up to, causing, or attending the homicide, and are not confined to occurrences at the very time thereof. Pendleton *v.* Commonwealth, 131 Va. 676, 109 S.E. 201, 209.

Thrift, integrity, good repute, business capacity, and stability of character, for example, are "circumstances" which may be very properly considered in determining the question of "adequate security." Martin v. Duke, 5 Rea. Sur. (N.Y.) 600.

CIRCUMSTANTIAL EVIDENCE. The term includes all evidence of indirect nature. Milligan v. State, 109 Fla. 219, 147 So. 260, 263.

It is direct evidence as to facts deposed to but indirect as to the factum probandum, Brown v. State, 126 Tex.Cr.R. 449, 72 S.W.2d 269, 270; evidence of facts or circumstances from which the existence or nonexistence of fact in issue may be inferred. People v. Steele, 37 N.Y.S.2d 199, 200, 179 Misc. 587; Wolff v. Employers Fire Ins. Co., 282 Ky. 824, 140 S.W.2d 640, 645, 130 A.L.R. 682; Scott v. State, 57 Ga.App. 489, 195 S.E. 923, 924; inferences drawn from facts proved, Hatfield v. Levy Bros., 18 Ca1.2d 798, 117 P. 2d 841, 845; preponderance of probabilities, Hercules Powder Co., v. Nieratko, 113 N.J.L. 188, 173 A. 606, 610; process of decision by which court or jury may reason from circumstances known or proved, to establish by inference the principal fact, People v. Taddio, 292 N.Y. 488, 55 N.E. 2d 749, 750.

It means that existence of principal facts is only inferred from circumstances. Twin City Fire Ins. Co. v. Lonas, 255 Ky. 717, 75 S.W.2d 348, 350.

When the existence of the principal fact is deduced from evidentiary by a process of probable reasoning, the evidence and proof are said to be presumptive. Best, Pres. 246; Id. 12. All presumptive evidence is circumstantial because necessarily derived from or made up of *circumstances,* but all circumstantial evidence is not presumptive. Burrill.

The proof of various facts or circumstances which usually attend the main fact in dispute, and therefore tend to prove its existence, or to sustain, by their consistency, the hypothesis claimed. Or as otherwise defined, it consists in reasoning from facts which are known or proved to establish such as are conjectured to exist.

CIRCUMSTANTIBUS, TALES DE. See Tales.

CIRCUMVENTION. In Scotch law. Any act of fraud whereby a person is reduced to a deed by decreet. It has the same sense in the civil law. Dig. 50, 17, 49, 155. And see Oregon v. Jennings, 7 S.Ct. 124, 119 U.S. 74, 30 L.Ed. 323.

CIRCUS. A large inclosure with one end rounded for races, a show in which feats of horsemanship, tumbling, strength, etc., are exhibited. Zucarro v. State, 82 Tex.Cr.R. 1, 197 S.W. 982, 985, L.R.A. 1918B, 354.

CIRIC. In Anglo-Saxon and old English law, *a* church.

CIRIC-BRYCE. Any violation of the privileges of a church.

CIRIC SCEAT. Church-scot, or shot; an ecclesiastical due, payable on the day of St. Martin, consisting chiefly of corn.

CIRLISCUS. A ceorl *(q. v.).*

CISTA. A box or chest for the deposit of charters, deeds, and things of value.

CITACION. In Spanish law. Citation; summons; an order of a court requiring a person against whom a suit has been brought to appear and defend within a given time.

It is synonymous with the term *emplazamiento* in the old Spanish law, and the in *jus vocatio* of the Roman law.

CITATIO. Lat. A citation or summons to court.

CITATIO AD REASSUMENDAM CAUSAM. A summons to take up the cause. A process, in the civil law, which issued when one of the parties to a suit died before its determination, for the plaintiff against the defendant's heir, or for the plaintiff's heir against the defendant, as the case might be; analogous to a modern bill of revivor, which is probably borrowed from this proceeding.

CITATIO EST DE JURI NATURAL!. A summons is by natural right. Cases in Banco Regis Wm. III. 453.

CITATION. A writ issued out of a court of competent jurisdiction, commanding a person therein named to appear on a day named and do something therein mentioned, or show cause why he should not. Proctor, Prac. Sheldon v. Sheldon, 100 N.J.Eq. 24, 134 A. 904, 907. An order or summons by which a defendant is directed or notified to appear. Adams v. Citizens Bank, 136 So. 107, 109, 17 La.App. 422; Burrage v. Hunt Production Co., Tex.Civ.App., 114 S.W.2d 1228, 1239. The act by which a person is so summoned or cited.

It is usually original process in any proceeding where used, and in such respect is analogous to a writ of capias or summons at law and subpcena in chancery. Gondas v. Gondas, 99 N.J.Eq. 473, 134 A. 615, 618.

As the act of the court through *its* proper officer commanding the appearance of defendant at the time and place named to answer to plaintiff's petition, it has the dignity of official character and weight of superior authority. Moran Oil & Gas Co. v. Anderson, Tex.Civ.App., 223 S.W. 1031, 1032. It is used in this sense, in American law, in the practice upon writs of error from the United States supreme court, and in the proceedings of courts of probate in many of the states. Durfee v. Durfee, 293 Mass. 472, 200 N.E. 395, 397; Schwartz v. Lake, 109 La. 1081, 34 So. 96.

It is also the name of the process used in the English ecclesiastical, probate, and divorce courts to call the defendant or respondent before them. 3 B1.Comm. 100; 3 Steph. Comm. 720. And in Scotch practice it is the calling of a party to an action done by an officer of the court under a proper warrant; the service of a writ or bill of summons. Paters. Comp.

CITATION OF AUTHORITIES. The reading, or production of, or reference to, legal authorities and precedents, (such as constitutions, statutes, reported cases, and elementary treatises,) in arguments to courts, or in legal text-books, to establish or fortify the propositions advanced.

CITATIONS, LAW OF. In Roman law. An act of Valentinian, passed A. D. 426, providing that the writings of only five jurists, viz., Papinian, Paul, Gaius, Ulpian, and Modestinus, should be quoted as authorities. The majority was binding on the judge. If they were equally divided the opinion of Papinian was to prevail; and in such a case, if Papinian was silent upon the matter, then the judge was free to follow his own view of the matter. Brown.

CITATIONES NON CONCEDANTUR PRIUSQUAM EXPRIMATUR SUPER QUA RE FIERI DEBET CITATIO. Citations should not be granted before it is stated about what matter the citation is to be made. (A maxim of ecclesiastical law.) 12 Coke, 44.

CITE. L. Fr. City; a city. *Cite de Loundr',* city of London.

CITE. To summon; to command the presence of a person; to notify a person of legal proceedings against him and require his appearance thereto. See In re Eno's Estate, 180 N.Y.S. 889, 890, 111 Misc. 69. To read or refer to legal authorities, in an argument to a court or elsewhere, in support of propositions of law sought to be established.

CITIZEN. A member of a free city or jural society, *(civitas,)* possessing all the rights and privileges which can be enjoyed by any person under its constitution and government, and subject to the corresponding duties. "Citizens" are members of community inspired to common goal, who, in associated relations, submit themselves to rules of conduct for the promotion of general welfare and conservation of individual as well as collective rights. In re McIntosh, D.C.Wash., 12 F. Supp. 177.

The term appears to have been used in the Roman government to designate a person who had the freedom of the city, and the right to exercise all political and civil privileges of the government. There was also, at Rome, a partial citizenship, including civil, but not political rights. Complete citizenshi P embraced both. Thomasson v. State, 15 Ind. 451; 17 L.Q.Rev. 270; 1 Sel.Essays in Anglo-Amer. L.H. 578.

A member of a nation or body politic of the sovereign state or political society who owes allegiance, Luria v. U. S., 34 S.Ct. 10, 19, 231 U.S. 9, 58 L.Ed. 101; U. S. v. Polzin, D.C.Md., 48 F.Supp. 476, 479.

A member of the civil state entitled to all its privileges. Cooley, Const.Lim. 77. One of the sovereign people. A constituent member of the sovereignty synonymous with the people. Scott v. Sandford, 19 How. 404, 15 L.Ed. 691.

### In American Law

One who, under the constitution and laws of the United States, or of a particular state, is a member of the political community, owing allegiance and being entitled to the enjoyment of full civil rights. Amy v. Smith, 1 Litt. (Ky.) 331; Minor v. Happersett, 21 Wall. 162, 22 L.Ed. 627.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. Amend. XIV, Const.U.S.; Nyman v. Erickson, 100 Wash. 149, 170 P. 546, 547.

The term may include or apply to an elector qualified to vote in an election, Belmont v. Town of Gulfport, 97 Fla. 688, 122 So. 10; children of alien parents born in United States, Von Schwerdtner v. Piper, D.C.Md., 23 F.2d 862, 863; U. S. v. Minoru Yasui, D.C.Or., 48 F.Supp. 40, 54; children of American citizens born outside United States, Hoaland v. Attorney General of United States, D.C.Md., 42 F.Supp. 13, 22; Indians, United States v. Hester, C.C.A. Okl., 137 F.2d 145, 147; State v. McAlhaney, 220 N.C. 387, 17 S.E.2d 352, 354; national banks, American Surety Co. v. Bank of California, C.C.A.Or., 133 F.2d 160, 162; Ezzell v. First Nat. Banks, 218 Ala. 462, 119 So. 2, 3; negroes and whites, United States v. Ellis, D.C.S.C., 43 F.Supp. 321, 324; nonresident who has qualified as administratrix of estate of deceased resident, Williams' Code Tenn. § 8236. Hunt v. Noll, C.C.A.Tenn., 112 F.2d 288, 289; persons entitled to privileges and immunities conferred upon same terms upon which they are conferred upon other citizens, Austin v. United States, D.C.I11., 40 F.Supp. 777, 778.

The terms "citizen" and "citizenship" are distinguishable from "resident" or "inhabitant." Jeffcott v. Donovan, C.C.A.Ariz., 135 F.2d 213, 214; and from "domicile," Wheeler v. Burgess, 263 Ky. 693, 93 S.W.2d 351, 354; First Carolinas Joint Stock Land Bank of Columbia v. New York Title & Mortgage Co., D.C.S.C., 59 F.2d 350, 351. The words "citizen" and "citizenship," however, usually include the idea of domicile, Delaware, L. & W. R. Co. v. Petrowsky, C.C.A.N.Y., 250 F. 554, 557; citizen inhabitant and resident often synonymous, Jonesboro Trust Co. v. Nutt, 118 Ark. 368, 176 S.W. 322, 324; Edgewater Realty Co. v, Tennessee Coal, Iron & Railroad Co., D.C.Md., 49 F. Supp. 807, 809; and citizenship and domicile are often synonymous. Messick v. Southern Pa. Bus Co., D.C.Pa., 59 F. Supp. 799, 800.

A corporation is a citizen of state under whose laws it Is created and a nonresident of every other state. Jackson Securities & Investment Co. v. State, 241 Ala. 288, 2 So.2d 760, 764. It is not a citizen within meaning of federal constitution declaring citizens of each state entitled to privileges and immunities of citizens in the several states or within Fourteenth Amendment prohibiting states from abridging privileges and immunities ot citizens of United States, J. D. L. Corporation v. Bruckman, 11 N.Y. S.2d 741, 746, 171 Misc. 3; but see In re Thermiodyne Radio Corporation, D.C.Del., 26 F.2d 713, 714; nor within statute authorizing citizens of United States to prosecute appeal to Circuit Court of Appeals without prepaying costs or giving security, Atlantic S. S. Corporation v. Kelley, C.C.A.Fla., 79 F.2d 339, 340; nor within statute authorizing permission to citizens to sue in forma pauperis, Quittner v. Motion Picture Producers & Distributors of America, C.C.A.2, 70 F.2d 331, 332; nor within statute requiring suit in district wherein either plaintiff or defendant resides. Standard Stoker Co. v. Lower, D.C.Md., 46 F.2d 678. 684; Sutherland v. U. S., C.C.A.Neb., 74 F.2d 89, 92. Insurance companies, incorporated under state law. are "citizens of this state" within statute requiring foreign insurance companies to file bonds for payment of their obligations to such citizens. Republic Ins. Co. v. Cunningham, Tex.Civ.App., 62 S.W.2d 339, 343. The term "citizen" will not be construed to include a corporation, unless the general purpose and import of the statutory or constitutional provision seems to require it. St. Louis & S. F. R. Co. v. State, 120 Ark. 182, 179 S. W. 342, 343, Ann.Cas.1917C, 873; Jennings v. Idaho Ry., Light & Power Co., 26 Idaho, 703, 146 P. 101, 102, L.R.A.1915D, 115, Ann.Cas.1916E, 359.

Neither a corporation nor a partnership is a citizen of the United States entitled to immunity from service of summons by substituted service, Western Mut. Fire Ins. Co. v. Lamson Bros. & Co., D.C.Iowa, 42 F.Supp. 1007, 1012.

Filipinos are not citizens of United States, De Cano v. State, 7 Wash.2d 613, 110 P.2d 627, 631; People v, Cordero, 50 Cal.App.2d 146, 122 P.2d 648, 649; but see holding that Filipinos are within provision of Neutrality Act defining "citizen" as including any individual owing allegiance to the United States. Suspine v. Compania Transatlantica Centroamericana, S. A., D.C.N.Y., 37 F.Supp. 268, 271.

A state cannot be a citizen. Query v. 206 Cases of Assorted Liquor, D.C.S.C., 49 F.Supp. 693, 695.

But a state and the federal government each has citizens of its own, and the same person may be at the same time a citizen of the United States and a citizen of a state. The government of the United States can neither grant nor secure to its citizens rights or privileges which are not expressly or by implication placed under its jurisdiction. All that cannot be so granted or secured are left to the exclusive protection of the states. U. S. v. Cruikshank, 92 U.S. 542, 23 L.Ed. 588.

With reference to the jurisdiction and power of federal courts and removal of actions a citizen of the District of Columbia is not a "citizen of a state", Neild v. District of Columbia, 110 F.2d 246, 249, 71 App.D.C. 306; Glaeser v. Acacia Mut. Life Ass'n, D.C.Cal., 55 F.Supp. 925, 926; a corporation is a citizen of the state where it is organized, and a foreign corporation does not become a citizen of another state where it is authorized to carry on business, Van Buren v. Connecticut Gen. Life Ins. Co., D.C.Mass., 42 F.Supp. 279, 280; a municipal subdivision, such as county, city, town, or school district, is a citizen, Siegel v. City of Detroit, Department of Street Railways, D.C.Mich., 52 F.Supp. 669; Pettibone v. Cook County, Minn., C.C.A. Minn., 120 F.2d 850, 852; a national bank is a citizen of state where it has its principal place of business, American Surety Co. of New York v. Bank of California, D.C.Or., 44 F.Supp. 81, 83; Atwood v. National Bank of Lima, C.C.A. Ohio, 115 F.2d 861, 862; a state is not a citizen, Board of Health of Township of Hillside v. Mundet Cork Corporation, 126 N.J.Eq. 100, 8 A.2d 105, 106, 107; State of North Dakota v. National Milling & Cereal Co., C.C.A.N.D., 114

F.2d 777, 779; State Highway Commission of Wyoming v. Utah Const. Co., (Wyo.) 49 S.Ct. 104, 106, 278 U.S. 194, 73 L.Ed. 262; a turnpike commission is a citizen, Hunkiri-Conkey Const. Co. v. Pennsylvania Turnpike Commission, D.C.Pa., 34 F.Supp. 26, 28; an association is not a citizen, Rife v. Lumber Underwriters, C.C.A.Tenn., 204 F. 32, 35; Village Mills Co. v. Houston Oil Co. of Texas, Tex.Civ. App., 186 S.W. 785, 788; domicile and citizen are synonmous in federal courts, Earley v. Hershey Transit Co., D.C. Pa., 55 F.Supp. 981, 982; inhabitant, resident and citizen are synonymous, Standard Stoker Co. v. Lower, D.C.Md., 46 F.2d 678, 683.

In English Law

An inhabitant of a city. 1 Rolle, 138. The representative of a city, in parliament. 1 Bl.Comm. 174.

The word "subject" *is* used to designate an inhabitant of the *country,* or one amenable to the laws of the nation.

CITIZENSHIP. The *status* of being a citizen (q. v.).

CITY.

In England

An incorporated town or borough which is or has been the see of a bishop. Co.Litt. 108; 1 Bl. Comm. 114; Cowell; 1 Steph.Comm. 115. State v. Green, 126 N.C. 1032, 35 S.E. 462.

*There is* said, however, to be no necessary connection between a city and a see. Oxford Diet., citing Freeman.

A large town incorporated with certain privileges. The inhabitants of a city. The citizens. Worcester.

In America

A municipal corporation; Streat v. Vermilya, 268 Mich. 1, 255 N.W. 604, 606; also the territory within the corporate limits. Municipal Power Transmission Co. v. City of Lyndon, 127 Kan. 59, 272 P. 158, 160.

A large town or municipal corporation, State v. Haynes, 175 Ark. 645, 300 S.W. 380, 382; a political entity or subdivision for governmental purposes, Nolan v. Jones, 215 Ky. 238, 284 S.W. 1054, 1056; a public institution for self-government, Loeb v. City of Jacksonville, 101 Fla. 429, 134 So. 205, 207; a public corporation for public purposes, Chase v. Inhabitants of Town of Litchfield, 134 Me. 122, 182 A. 921, 924.

A state agency for carrying on local government. Hudson Motor Car Co. v. City of Detroit, 282 Mich. 69, 275 N. W. 770, 773, 113 A.L.R. 1472; a voluntary association or corporation. State ex rel. McQueen v. Brandon, 244 Ala. 62, 12 So.2d 319, 322; Leviton v. Board of Education of City of Chicago, 374 Ill. 594, 30 N.E.2d 497, 500.

The fundamental distinction between town and city organization is that in the former all the qualified inhabitants meet together to deliberate and vote as individuals, each in his own right, while in the latter all municipal functions are performed by deputies; the one being direct, the other representative. In re Opinion of the Justices, 229 Mass. 601, 119 N.E. 778, 781.

The word "city," however, is often used to include an incorporated town. Noble v. State, 112 Tex.Cr.R. 676, 18 S. W.2d 619, 620; and to include villages, People v. City of Chicago, 349 Ill. 304, 182 N.E. 419, 431. It has also been held that, under statutes, the term includes all municipal corporations and corporate authorities, such as a board of park commissioners; People v. Kesner, 321 Ill. 230, 151 N. E. 481, 483; but that it does not include a village; Village of Depue v. Banschbach, 273 Ill. 574, 113 N.E. 156, 159.

In Medieval History

In the Middle Ages in Germany, fortified places in the enjoyment of market-jurisdiction.

The German as well as the French cities are a creation of the Middle Ages; there was an organic connection with the Roman town-system. Schroder, Lehrbuch des Deutchen Rechtsgeschichte 588.

CITY COUNCIL. The name of a group of municipal officers constituting primarily a legislative and administrative body, but which is often charged with judicial or quasi judicial functions, as when sitting on charges involving the removal of an officer for cause. Rutter v. Burke, 89 Vt. 14, 93 A. 842, 849.

CITY ELECTION. Any election in a city at which people of the city may vote, Wing v. Ryan, 6 N. Y.S.2d 825, 829, 255 App.Div. 163.

CITY OF LONDON COURT. A court having a local jurisdiction within the city of London. It is to all intents and purposes a county court, having the same jurisdiction and procedure.

CITY REAL ESTATE. Property owned and used for municipal purposes. McSweeney v. Bazinet, 55 N.Y.S.2d 558, 561, 269 App.Div. 213.

CITY WARRANT. A command of council to treasurer to pay amount. State v. McCarthy, 282 P. 1045, 1048, 86 Mont. 100.

CIUDADES. Sp. In Spanish law, cities; distinguished from towns (pueblos) and villages (villas.) Hart v. Burnett, 15 Cal. 537.

CIVIC. Pertaining to a city or citizen, or to citizenship. Cleveland Opera Co. v. Cleveland Civic Opera Ass'n, 22 Ohio App. 400, 154 N.E. 352, 353.

CIVIC ENTERPRISE. A project or undertaking in which citizens of a city co-operate to promote the common good and general welfare of the people of the city. James McCord Co. v. Citizens' Hotel Co., Tex.Civ.App., 287 S.W. 906, 908.

CIVIL. Originally, pertaining or appropriate to a member of a *civitas* or free political community; natural or proper to a *citizen.* Also, relating to the community, or to the policy and government of the citizens and subjects of a state.

The word is derived from the Latin civilis, a citizen. Byers v. Sun Savings Bank, 41 Okl. 728, 139 P. 948, 949, 52 L.R.A.,N.S., 320, Ann.Cas.1916D, 222. In law, it has various significations. In contradistinction to *barbarous* or *savage,* it indicates a state of society reduced to order and regular government. In contradistinction to *criminal,* it indicates the private rights and remedies of men. It is also used in contradistinction to *military, ecclesiastical, natural,* or *foreign.* Story, Const. § 791; 1 Bla.Comm. 6, 125, 251; Montesquieu, Sp. of Laws, b. 1, c. 3; Rutherforth, Inst. b. 2, c. 2; *id.* c. 3; *id.* c. 8, p. 359; Heineccius, Elem. Jurisp.Nat. b. 2, ch. 6.

A prisoner's statutory obligation to pay for his keep and maintenance is civil. Auditor General v. Hall, 300 Mich. 215, 1 N.W.2d 516, 518, 139 A.L.R. 1022.

As to civil "Commotion," "Conspiracy," "Contempt," "Corporations," "Death," "Injury," "Liberty," "Obligation," "Officer," "Possession," "Remedy," "Rights," and "War," see those titles. See, also, the following titles beginning with "Civil."

CIVIL ACTION.

In general

An action wherein an issue is presented for trial formed by averments of complaint and de-

nials of answer or replication to new matter, White v. White, 98 Ind.App. 587, 186 N.E. 349, 351., an adversary proceeding for declaration, enforcement, or protection of a right, or redress, or prevention of a wrong, People v. Barker, 29 Cal.App. 2d Supp. 766, 77 P.2d 321, 323; Lee v. Lang, 140 Fla. 782, 192 So. 490, 491; Johnston v. State, 212 Ind. 375, 8 N.E. 590, 592. Every action other than a criminal action, City of Neenah v. Krueger, 206 Wis. 473, 240 N.W. 402, 404; Gillson v. Vendome Petroleum Corporation, D.C.La., 35 F.Supp. 815, 819.

Both actions at law and actions in equity. Kiepinger v. Rhodes, 140 F.2d 697, 698, 78 U.S.App.D.C. 340.

In the Civil Law

A personal action which is instituted to compel payment, or the doing of some other thing which is purely civil. Pothier, Introd. *Gen. aux Cont.* 110.

At Common Law

One which seeks the establishment, recovery, or redress of private and civil rights. One brought to recover some civil right, or to obtain redress for some wrong not being a crime or misdemeanor. Wheeling Traction Co. v. Pennsylvania Co., D.C.Ohio, 1 F.2d 478, 479.

Civil suits relate to and affect only individual rights whereas criminal prosecutions involve public wrongs. Cancemi v. People, 18 N.Y. 128. They include all cases, both at law and in equity, which cannot legally be denominated "criminal cases." Fenstermacher v. State, 19 Or. 504, 25 P. 142; Welford v. Havard, 127 Miss. 83, 89 So. 812, 813.

*In Code Practice*

The one form of action for enforcement or protection of private rights and prevention or redress of private wrongs. Code N.Y. § 69. It may also be brought for the recovery of a penalty or forfeiture.

"Civil action" implies adversary parties and an issue, and is designed for the recovery or vindication of a civil right or the redress of some civil wrong. Bopst v. Williams, 287 Mo. 317, 229 S.W. 796, 798. It is a generic term, and does not necessarily imply jury trial. State Board of Medical Examiners v. Macy, 92 Wash. 614, 159 P. 801, 804.

CIVIL BILL COURT. A tribunal in Ireland with a jurisdiction analogous to that of the county courts in England. The judge of it is also chairman of quarter sessions (where the jurisdiction is more extensive than in England), and performs the duty of revising barrister. Wharton.

CIVIL DAMAGE ACTS. Acts which provide in certain cases an action for damages to one injured because of the furnishing of liquor. Tarwater v. Atlantic Co., 176 Tenn. 510, 144 S.W.2d 746, 747.

CIVIL DAY. See the title Day.

CIVIL ENFORCEMENT PROCEEDING. The penalty actions under Emergency Price Control Act. Bowles v. Barde Steel Co., 177 Or. 421, 164 P.2d 692, 715, 162 A.L.R. 328.

CIVIL INFORMATION. A legal proceeding in chancery, older than the court of equity. Wilson v. State Water Supply Commission, 84 N.J.Eq. 150, 93 A. 732, 733.

CIVIL INQUEST. A proceeding to determine whether an individual is a criminal sexual psychopathic person within statute providing for confinement and treatment of such persons. People v. Chapman, 301 Mich. 584, 4 N.W.2d 18, 26.

CIVIL LAW. "Civil Law," "Roman Law" and "Roman Civil Law" are convertible phrases, meaning the same system of jurisprudence.

That rule of action which every particular nation, commonwealth, or city has established peculiarly for itself; more properly called "municipal" law, to distinguish it from the "law of nature," and from international law. See Bowyer, Mod. Civil Law, 19; Sevier v. Riley, 189. Cal. 170, 244 P. 323, 325.

That division of municipal law which is occupied with the exposition and enforcement of civil rights as distinguished from criminal law.

The system of jurisprudence held and administered in the Roman empire, particularly as set forth in the compilation of Justinian and his successors,—comprising the Institutes, Code, Digest, and Novels, and collectively denominated the *"Corpus Juris* Civi/is,"—as distinguished from the common law of England and the canon law.

The word "civil," as applied to the laws in force in Louisiana, before the adoption of the Civil Code, is not used in contradistinction to the word "criminal," but must be restricted to the Roman law. It is used in contradistinction to the laws of England and those of the respective states. Jennison v. Warmack, 5 La. 493.

CIVIL LIABILITY. The amenability to civil action as distinguished from amenability to criminal prosecution. Corn. v. Shimpeno, 160 Pa.Super. 104, 50 A.2d 39, 43. A sum of money assessed either as general, special or liquidated damages, either-single, double or treble for violation such as overcharges. Lewis v. Anderson, D.C.Cal., 72 F.Supp, 119, 123.

CIVIL LIST. In English public law. An annual sum granted by parliament, at the commencement of each reign, for the expense of the royal household and establishment, being a provision made for the crown out of the taxes in lieu of its proper patrimony. 2 Steph.Comm. 591; 1 Bl.Comm. 332.

CIVIL NUISANCE. At common law, anything done to hurt or annoyance of lands, tenements, or hereditaments of another. Brownsey v. General Printing Ink Corporation, 118 N.J.L. 505, 193 A. 824, 826.

CIVIL OBLIGATION. One which binds in law, and may be enforced in a court of justice. Pothier, Obl. 173, 191.

CIVIL OFFICE. An office, not merely military in its nature, that pertains to the exercise of the powers or authority of civil government. State ex rel. Landis v. Futch, 122 Fla. 837, 165 So. 907, 909. Requisites are continuity, creation and definition of powers and duties by Constitution or Legislature, or their authority, possession of governmental power, and independence unless controlled by superior officers. State ex rel. McIntosh v. Hutchinson, 187 Wash. 61, 59 P.2d 1117, 1118, 105 A.L.R. 1234.

CIVIL OFFICER. See Officer.

CIVIL POSSESSION. See Possession.

CIVIL RESPONSIBILITY. The liability to be called upon to respond to an action at law for an injury caused by a delict or crime, as opposed to criminal responsibility, or liability to be proceeded against in a criminal tribunal.

CIVIL RIGHTS. See Right.

CIVIL SERVICE. This term properly includes all functions under the government, except military functions. In general it is confined to functions in the great administrative departments of state. People v. Cram, 61 N.Y.S. 858, 29 Misc. 359. But in enlarged sense means all service rendered to and paid for by state, nation, or political subdivisions thereof, except that pertaining to naval or military affairs. Long v. Wells, 186 Ga. 602, 198 S.E. 763, 768.

CIVIL SERVICE REFORM. Substitution of business principles and methods for spoils system in conduct of civil service, especially in matter of appointments. Ward v. Leche, 189 La, 113, 179 So. 52, 55.

CIVIL SIDE. When the same court has jurisdiction of both civil and criminal matters, proceedings of the first class are often said to be on the civil side; those of the second, on the criminal side.

CIVIL TOWNSHIP. A legal subdivision of the county for governmental purposes. Appeal of Trustees of Iowa College, 185 Iowa 434, 170 N.W. 813, 814.

CIVIL YEAR. See Year.

CIVILIAN. One who is skilled or versed in the civil law. A doctor, professor, or student of the civil law. Also a private citizen, as distinguished from such as belong to the army and navy or (in England) the church.

CIVILIS. Lat. Civil, as distinguished from criminal. *Civilis actio,* a civil action. Bract. fol. 101b.

CIVILISTA. In old English law. A civil lawyer, or civilian. Dyer, 267.

CIVILITER. Civilly. In a person's civil character or position, or by civil (not criminal) process or procedure. This term is used in distinction or opposition to the word "crimincaiter,"-criminally,- to distinguish civil actions from criminal prosecutions. 2 East, 104.

CIVILITER MORTUUS. Civilly dead; dead in the view of the law. The condition of one who has lost his civil rights and capacities, and is accounted dead in law. Rasor v. Rasor, 173 S.C. 365, 175 S.E. 545.

CIVILIZATION.

In Practice

A law; an act of justice, or judgment which renders a criminal process civil; performed by turning an information into an inquest, or the contrary. Wharton.

In Public Law

A term which covers several states of society; it is relative, and has no fixed sense, but implies an improved and progressive condition of the people, living under an organized government. Roche v. Washington, 19 Ind. 56, 81 Am.Dec. 376. It consists not merely in material achievements, in accomplishment and accumulation of wealth, or in advancement in culture, science, and knowledge, but also in doing of equal and exact justice. Stiglitz v. Schardien, 239 Ky. 799, 40 S.W.2d 315, 321.

CIVIS. Lat. In the Roman law. A citizen; as distinguished from *incola,* (an inhabitant;) origin or birth constituting the former, domicile the latter. Code, 10, 40, 7. And see U. S. v. Rhodes, 27 Fed.Cas. 788.

CIVITAS, Lat. In the Roman law. Any body of people living under the same laws; a state. *Jus civitatis,* the law of a state; civil law. Inst. 1, 2, 1, 2. *Civitates fcederatce,* towns in alliance with Rome, and considered to be free. Butl.Hor.Jur. 29.

Citizenship; one of the three *status,* conditions, or qualifications of persons. Mackeld.Rom.Law, § 131.

A term in the Anglo-Saxon land books, commonly applied to Worcester, Canterbury and other such places, which are both bishop's sees and the head places of large districts. Maitland, Domesday and Beyond 183. See 17 L.Q.R. 274. Oxford Dict. *s.* v. *City.*

See City.

CLAIM, n. A broad, comprehensive word, Wheeler v. Equitable Life Assur. Soc. of United States, 211 Minn. 474, 1 N.W.2d 593, 596.

CLAIM, v. To demand as one's own; to assert, Hill v. Henry, 66 N.J.Eq. 150, 57 Atl. 555. To state; to urge; to insist.

It may embrace or apply to a call, In re Heim's Estate, 3 N.Y.S.2d 134, 138, 166 Misc. 931; a demand, Moulding-Brownell Corporation v. E. C. Delfosse Const. Co., 291 Ill. App. 343, 9 N.E.2d 459, 461, a pretense; a right or title, Orenberg v. Thecker, 143 F.2d 375, 377, 79 U.S.App.D.C. 149; Lawrence v. Miller, 2 N.Y. 245, 254; an account, In re Stratman's Estate, 231 Iowa 480, 1 N.W.2d 6:36, 642; an action on account, Coleman v. Kansas City, 351 Mo. 254, 173 S.W.2d 572, 576; an assertion, Ritter v. Albuquerque Gas & Electric Co., 47 N.M. 329, 142 P.2d 919, 922; both the principal amount of judgment and interest thereon, Powell v. Link, C.C.A.Va., 114 F.2d 550, 554; cause of suit or cause of action, Jacobson v. Mutual Ben. Health & Accident Ass'n, 73 N.D. 108, 11 N.W.2d 442, 446; challenge of property or ownership of a thing which is wrongfully withheld, Douglas v. Beasley, 40 Ala. 147; Prigg v. Pennsylvania, 16 Pet. 615, 10 L.Ed. 1060; challenge of something as right, Uintah State Bank v. Ajax, 77 Utah, 455, 297 P. 434, 438. Claims ex delicto as well as ex contractu, Williams v. Williams, 217 Ind. 581, 29 N.E.2d 557, 558. Debt, Tanner v. Best's Estate, 40 Cal.App.2d 442, 104 P.2d 1084, 1087. But not all valid "claims" are "debts," State Banking Co. v. Hinton, 178 Ga. 68, 172 S.E. 42, 47, 91 A.L.R. 596; existing right, Mellus v. Potter, 91 Cal.App. 700, 267 P. 563, 564; judgment, Jennings v. Loucks, 297 N.Y.S. 893, 896, 163 Misc. 791; legal capability to require a positive or negative act of another person, Kocourek, Jural Relations, 2d Ed., 7; legal claim, right. In re Heinemann's Will, 201 Wis. 484, 230 N.W. 698, 700; means by or through which claimant obtains possession or enjoyment of privilege or thing, Lawrence v. Miller, 2 N.Y. 245, 254; valid claim,

Tennessee Consol. Coal Co. v. Commissioner of Internal Revenue, C.C.A.6, 117 F.2d 452, 454.

In patent law, specification by applicant for patent of particular things in which he insists his invention is novel and patentable ; the clause in application in which applicant defines precisely what his invention is. Westinghouse Electric & Mfg. Co. v. Metropolitan Electric Mfg. Co., C.C.A.N.Y., 290 F. 661, 664.

Under Compensation Acts, a claim for which an amount of compensation may be deducible. Texas Employers Ins. Ass'n v. Booth, Tex.Civ.App., 113 S.W.2d 231, 241.

A demand for compensation, Georgia Casualty Co. v. Ward, Tex.Civ.App., 220 S.W. 380, 381; or for payment of medical expenses, Schmidt v. City of Lincoln, 137 Neb. 546, 290 N.W. 250, 253; A notice that claimant is claiming compensation and benefits, Kaplan v. Kaplan Knitting Mills, 248 N.Y. 10, 161 N.E. 204, 206; A provision that no claim for compensation shall be assignable before payment, covers both claims and awards. Pacific Electric R. Co. v. Commonwealth Bonding & Casualty Ins. Co., 55 Cal.App. 704, 204 P. 262, 263.

Under land laws, tract of land taken up by a preemptioner or other settler (and also his possession of it). Railroad Co. v. Abink, 14 Neb. 95, 15 N.W. 317.

Under mechanic's lien law of some states, a demand put on record by a mechanic or material-man against a building for work or material contributed to its erection.

Under statute authorizing the courts to order a bill of particulars of the "claim" of either party, "claim" is coextensive with "case," and embraces all causes of action and all grounds of defense, the pleas of both parties, and pleas in confession and avoidance, no less than complaints and counter-claims. Orvis v. Jennings, 6 Daly (N.Y.) 446.

When applied to estate of decedent, asserted but unadjudicated obligation, In re Franks' Estate, 277 N.Y.S. 573, 154 Misc. 472; debt or demand of a pecuniary nature, Tinkham v. Tinkham, 112 Ind.App. 532, 45 N.E.2d 357, 360; debts already due and unmatured debts, Roth v. Ravich, 111 Conn. 649, 151 A. 179, 180, 74 A.L.R. 364.

Within statute concerning presentation of false claim to political unit or officer, one which upon its face purports to be charge for which county would be liable. State ex rel. Welling v. Third Judicial District Court in and for Salt Lake County, 87 Utah 416, 49 P.2d 950, 952.

Within World War Veterans' Act any physical writing which furnishes the desired information, Cable v. United States, C.C.A.Ill., 104 F.2d 541, 545; assertion of a present claim demand, Werner v. United States, C.C.A.N.Y., 86 F. 2d 113; Cannon v. United States, D.C.Pa., 45 F.Supp. 106, 108.

An adverse claim is one set up by a stranger to goods upon which the sheriff has levied an execution or attachment. It is also applied to claims to real property.

For "Counter-claim" and "False Claim," and "False or Fraudulent Claim," see those titles.

CLAIM ACCRUED. Damage accrued. Megerell v. State, Ct.C1., 46 N.Y.S.2d 685, 688; Edlux Const. Corporation v. State, 300 N.Y.S. 509, 511, 252 App. Div. 373.

CLAIM BOND. A bond primarily in the nature of a forthcoming bond. Liability can be based thereon when the court adjudges the failure of the claimant in trial of right of property to establish his right to it. Sanders v. Farrier, Tex.Civ. App., 271 S.W. 293, 298.

CLAIM JUMPING. The location on ground, knowing it to be excess ground, within the staked boundaries of another mining claim initiated prior thereto, because law governing manner of making location had not been complied with, so that location covers the workings of the prior locators. Nelson v. Smith, 42 Nev. 302, 176 P. 261, 265.

CLAIM PROPERTY BOND. A bond filed by a defendant in cases of replevin and of execution to procure return of goods. Snyder v. Frankenfield, 4 Pa.Dist.R. 767; Weaver v. Lawrence, 1 Da11. 156, 1 L.Ed. 79; 1 Dali.U.S. (4th Ed. by Brightly) 156, 157, note.

CLAIM AND DELIVERY. Action at law for recovery of specific personal chattels wrongfully taken and detained, with damages which the taking or detention has caused; a modification of common-law action of replevin. Railroad Co. v. Gila County, 8 Ariz. 292, 71 P. 913; Farmers & Depositors Bank v. Taylor, 290 Ky. 774, 162 S.W.2d 764, 765.

CLAIM IN EQUITY. In English practice. In simple cases, the summary proceeding by claim was sometimes adopted. This summary practice was created by orders 22d April, 1850. See Smith, Ch. Pr. 664. By Consolid.Ord.1860, viii, r. 4, claims were abolished. Wharton.

CLAIM OF COGNIZANCE OR OF CONUSANCE. An intervention by a third person, claiming jurisdiction or demanding judicature in cause, which plaintiff has commenced out of the claimant's court. Now obsolete. 2 Wils. 409; 2 Bl.Comm. 350, note; 3 Bl.Comm. 298.

CLAIM OF LIBERTY. In English practice. A. suit or petition to the queen, in the court of exchequer, to have liberties and franchises confirmed there by the attorney general.

CLAIM OF OWNERSHIP, RIGHT AND TITLE. As regards adverse possession, claim of land as one's own to hold it for oneself. Peters v. Gillund, Tex.Civ.App., 186 S.W.2d 1019, 1020. Claim of right, claim of title and claim of ownership are synonymous. Ewing v. Tanner, 193 S.E. 243, 247, 184 Ga. 773; City of Rock Springs v. Sturm, 39 Wyo. 494, 273 P. 908, 911. Claimant's intention to claim in hostility to real owner, Bowden-Gazzam Co. v. Hogan, 22 Wash.2d 27, 154 P.2d 285, 289, 290. Color of title and claim of title are synonymous. Sullivan v. Neel, 105 Mont. 253, 73 P.2d 206, 208; Walton v. Sikes, 165 Ga. 422, 141 S.E. 188, 190. Intention of disseisor to appropriate and use land as his own, irrespective of any semblance of color, or right, or title. Marion Inv. Co. v. Virginia Lincoln Furniture Corporation, 171 Va. 170, 198 S.E. 508, 513, 118 A.L.R. 939.

CLAIMANT. As used in escheat proceeding, persons interested in the estate as heirs. In re Peers' Estate, 234 Iowa 403, 12 N.W.2d -894, 895. As used in statute regarding processing tax refunds, one from whom tax has been collected. Upchurch Packing Co. v. United States, D.C.Ga., 53 F.Supp. 791, 793. One who claims or asserts a right, demand or claim though sometimes "claimant" has a more restricted meaning. Weisgerber v. Workmen's Compensation Bureau, 70 N.D. 165, 292 N.W. G27, 630, 128 A.L.R. 1482.

In admiralty practice. A person who lays claim to property seized on a libel *in rem,* and is authorized and admitted to defend the action. 'The Conqueror, 17 S.Ct. 510, 166 U.S. 110, 41 L.Ed. 937; Thirty Hogsheads of Sugar, Bentzon, Claimant v. Boyle, 9 Cranch, 191, 3 L.Ed. 701.

CLAIMANT ADJUSTER. One who will obtain, secure, enforce, or establish a right, claim, or demand for an individual against an insurance company. Wilkey v. State ex rel. Smith, 244 Ala. 568, 14 So.2d 536, 543.

CLAM. Lat. In the civil law. Covertly; secretly.

CLAM FACTUM ID VIDETUR ESSE, QUOD QUISQUE, QUUM CONTROVERSIAM HABERET, HABITURUMVE SE PUTARET, FECIT. That appears to be covertly (secretly) done, which anyone did, when he had a legal dispute, or thought he would have one. Adams Gloss.

CLAM, VI, AUT PRECARIO. A technical phrase of the Roman law, meaning by force, stealth, or importunity.

CLAM DELINQUENTES MAGIS PUNIUNTUR QUAM PALAM. 8 Coke, 127. Those sinning secretly are punished more severely than those sinning openly.

CLAMEA ADMITTENDA IN ITINERE PER ATTORNATUM. An ancient writ by which the king commanded the justices in eyre to admit the claim by attorney of a person who was in the royal service, and could not appear in person. Reg.Orig. 19.

CLAMOR. In old English law. A claim or complaint; an outcry; clamor.

In the civil law. A claimant. A debt; anything claimed from another. A proclamation; an accusation. Du Cange.

CLANDESTINE. Secret; hidden; concealed. The "clandestine importation" of goods is a term used in English statutes as equivalent to "smuggling." Keck v. U. S., 19 S.Ct. 254, 172 U.S. 434, 43 L.Ed. 505. A clandestine marriage is (legally) one contracted without observing the conditions precedent prescribed by law, such as publication of bans, procuring a license, or the like. Hay v. State, 68 Fla. 458, 67 So. 107.

CLAP. Vulgar name for gonorrhea. Sally v. Brown, 220 Ky. 576, 295 S.W. 890, 891.

CLARE CONSTAT. (It clearly appears.) In Scotch law. The name of a precept for giving seisin of lands to an heir; so called from its initial words. Ersk.Inst. 3, 8, 71.

CLAREMETHEN. In old Scotch law. The warranty of stolen cattle or goods; the law regulating such warranty. Skene.

CLARENDON, ASSIZE OF. A statute (1166) the principal feature of which was an improvement of judicial procedure in the case of criminals. It was a part of the same scheme of reform as the Constitution of Clarendon. See James C. Carter, The Law, etc., 65.

CLARENDON, CONSTITUTIONS OF. Certain statutes made in the reign of Henry II. of England, at a parliament held at Clarendon, (A. D. 1164,) by which the king checked the power of the pope and his clergy, and greatly narrowed the exemption they claimed from secular jurisdiction. 4 B1.Comm. 422; Fitz Stephen 27; 2 Lingard 59; 1 Hume 382; Wilkins 321; 1 Poll. & M. 430-440, 461; 2 *id.* 196.

CLARIFICATIO. Lat. In old Scotch law. A making clear; the purging or clearing (clenging) of an assise. Skene.

CLASS. The order or rank according to which persons or things are arranged or assorted.

Also a body of persons uncertain in number, Weaver v. Liberty Trust Co., 183 A. 544, 548, 170 Md. 212; a group of persons, things, qualities, or activities, having common characteristics or attributes. Inter-County Rural Electric Co-op. Corporation v. Reeves, 294 Ky. 458, 171 S.W.2d 978, 982. Also grade, Commonwealth ex rel. Margiotti v. Sutton, 327 Pa. 337, 193 A. 250, 252. Also same descriptive properties. Cheek-Neal Coffee Co. v. Hal Dick Mfg. Co., Cust. & Pat.App., 40 F.2d 106, 107.

CLASS ACTION. An action brought on behalf of other persons similarly situated. Mitchell v. Wright, D.C.Ala., 62 F.Supp. 580, 582; Calabrese v. Chiumento, D.C.N.J., 3 F.R.D. 435, 437.

CLASS GIFT. A gift of aggregate sum to body of persons, uncertain in number at time thereof, to be ascertained at future time, Hepburn v. Winthrop, 83 F.2d 566, 570, 65 App.D.C. 309, 105 A.L.R. 310.

CLASS LEGISLATION. Legislation limited in operation to certain persons or classes of persons, natural or artificial, or to certain districts of territory or state, Vardaman v. McBee, 1C8 Miss. 251, 21 So.2d 661, 664. Legislation operating upon 'portion of particular class of persons or things. Shaw v. Fox, 246 Ky. 342, 55 S.W.2d 11.

The term is applied to enactments which divide the people or subjects of legislation into classes, with reference either to the grant of privileges or the imposition of burdens, upon an arbitrary, unjust, or invidious principle, or which make arbitrary discriminations between those persons or things coming within the same class. Leuthold v. Brandjord, 100 Mont. 96, 47 P.2d 41, 45; People v. Marcello, Mag.Ct.N.Y., 25 N.Y.S.2d 533, 537, 538, 539.

CLASS or REPRESENTATIVE ACTION. One in which one or more members of a class sue either for themselves or for themselves and other members of a class. Huester v. Gilmour, D.C.Pa., 13 F. Supp. 630, 631; City of Dallas v. Armour & Co., Tex.Civ.App., 216 S.W. 222, 224. The plaintiff in a representative action before judgment is, as a rule, *dominos litis, (q. v.,)* and may discontinue or compromise the action as he pleases. Sweet.

CLASS REPRESENTATION. Where members of class sue or are sued on behalf of other members

judgment is conclusive for and against those members of class thus represented, in absence of fraud or collusion. Barnes v. Fort, 181 S.W.2d 881, 884, 181 Tenn. 522; Grand International Brotherhood of Locomotive Engineers v. Mills, 43 Ariz, 379, 31 P.2d 971, 982.

CLASS SUIT, See Class or Representative Action,

CLASSIARIUS. A seaman or soldier serving at sea.

CLASSIC!. In the Roman law. Persons employed in servile duties on board of vessels. Cod. 11, 12.

CLASSIFICATION. A grouping into classes. Davison v. Parke Austin & Lipscomb, 19 N.Y.S.2d 117, 121, 173 Misc. 782.

It is the grouping of things in speculation or practice because they agree with one another in certain particulars and differ from other things in those particulars. Southern Package Corporation v. State Tax Commission, 164 So. 45, 47, 174 Miss. 212; Anderson v. Board of Public Instruction of Hillsborough County, 102 Fla, 695, 136 So. 334. The putting together of like subjects or facts under common designation, Tuttle v. Board of Education of Salt Lake City, 77 Utah, 270, 294 P. 294, 299.

The word may have two meanings, one primarily signifying a division required by statutes, fundamental and substantial, and the other secondary, signifying an arrangement or enumeration adopted for convenience only. In re Wichita Falls & Southern Ry. Co., D.C.Tex., 30 F.Supp. 750, 751.

In the practice of the English chancery division, where an administration action, it appears to the judge (or chief clerk) that any of the parties form a class having the same interest, he may require them to be represented by one solicitor, to prevent expense of each attending by separate solicitors. In practice the term is also applied to the directions given by the chief clerk as to which of the parties are to attend on each of the accounts and inquiries directed by the judgment. Sweet.

CLASSIFICATION OF RISKS. Term in fire insurance to the nature and situation of the articles insured, and in accident insurance to the occupation of the applicant. Hopkins v. Connecticut General Life Ins, Co., 225 N.Y. 76, 121 N.E. 465, 467.

CLASSIFIED. Grouped in classes. People v. Johnson, 42 Cal.App.2d Supp. 827, 109 P.2d 770, 774.;

CLASSIFIED CIVIL SERVICE. The primary meaning is that there be classification, while secondary meaning is mere arrangement or enumeration in schedule of titles of positions. Matter of Merriweather v. Roberts, 274 N.Y.S. 188, 190, 152 Misc. 57.

CLASSIFY. Group. Breslav v. New York & Queens Electric Light & Power Co., 291 N.Y.S. 932, 935, 249 App.Div. 181; Esquire, Inc., v. Walker, D.C.D.C., 55 F.Supp. 1015, 1021.

CLAUSE. A single paragraph or subdivision of a legal document, such as a contract, deed, will, constitution, or statute. Sometimes a sentence or part of a sentence. Bee Line Transp. Co. v. Connecticut Fire Ins. Co. of Hartford, C.C.A.N.Y., 76 F.2d 759, 760.

CLAUSE IRRITANT. In Scotch law. By this clause, in a deed or settlement, the acts or deeds of a tenant for life or other proprietor, contrary to the conditions of his right, become null and void; and by the "resolutive" clause such right becomes resolved and extinguished. Bell.

CLAUSE POTESTATIVE. In French law. The name given to the clause whereby one party to a contract reserves to himself the right to annul it.

CLAUSE ROLLS. In English law. Rolls which contain all such matters of record as were committed to close writs; these rolls are preserved in the Tower.

CLAUSULA. A clause; a sentence or part of a sentence in a written instrument or law.

CLAUSULA DEROGATIVA. A clause in a will which provides that no will subsequently made is to be valid. The latter would still be valid, but there would be ground for suspecting undue influence. Grotius.

CLAUSULA GENERALIS DE RESIDUO NON EA COMPLECTITUR QUIE NON EJUSDEM SINT GENERIS CUM IIS QUAZE SPECIATIM DICTA FUERANT. A general clause of remainder does not embrace those things which are not of the same kind with those which had been specially mentioned. Lofft, Appendix, 419.

CLAUSULA GENERALIS NON REFERTUR AD EXPRESSA. 8 Coke, 154. A general clause does not refer to things expressed.

CLAUSULA QUZE ABROGATIONEM EXCLUDIT AB INITIO NON VALET. A clause [in a law] which precludes its abrogation is void from the beginning. Bac.Max. 77.

CLAUSULA VEL DISPOSITIO INUTILIS PER PRIESUMPTIONEM REMOTAM, VEL CAUSAM EX POST FACTO NON FULCITUR. A useless clause or disposition [one which expresses no more than the law by intendment would have supplied] is not supported by a remote presumption, [or foreign intendment of some purpose, in regard whereof it might be material,] or by a cause arising afterwards, [which may induce an operation of those idle words.] Bac.Max. 82, regula 21.

CLAUSULiE INCONSUETIE SEMPER INDUCUNT SUSPICIONEM. Unusual clauses [in an instrument] always induce suspicion. 3 Coke, 81.

CLAUSUM. Lat. Close, closed up, sealed. Inclosed, as a parcel of land.

In old English law. Close. Closed.

A writ was either *clausum* (close) or *apertum* (open). Grants were said to be by *literce patentce* (open grant) or *literce clausce* (close grant) ; 2 Bla.Comm. 346. Occurring in the phrase *quare clausum fregit* (Rucker v. McNeely, 4 Blackf. [Ind.] 181), it denotes in this sense only realty in which the plaintiff has some exclusive interest, whether for a limited or unlimited time or for special or for general purposes ; 1 Chit.P1. 174; Austin v. Sawyer, 9 Cow. (N.Y.) 39; 6 East, 606.

CLAUSUM FREGIT. L. Lat. (He broke the close.) In pleading and practice. Technical

words formerly used in certain actions of trespass, and still retained in the phrase *quare clausum fregit (q. v.).*

CLAUSUM PASCHIIE. In English law. The morrow of the *utas,* or eight days of Easter; the end of Easter; the Sunday after Easter-day. 2 Inst. 157.

CLAUSURA. In old English law. An inclosure. *Clausura heyce,* the inclosure of a hedge. Cowell.

CLAVES CURVE, The keys of the court. They were the officers of the Scotch courts, such as clerk, doomster, and serjeant. Burrill.

CLAVES INSULIE. In Manx law. The keys of the Island of Man, or twelve persons to whom all ambiguous and weighty causes are referred.

CLAVIA. In old English law. A club or mace; tenure *per serjeantiam clavice,* by the serjeanty of the club or mace. Cowell.

CLAVIGERATUS. A treasurer of a church.

CLAWA. A close, or small inclosure. Cowell.

CLEAN. Irreproachable; innocent of fraud or wrongdoing; free from defect in form or substance; free from exceptions or reservations. It is a very elastic adjective, however, and is particularly dependent upon context. Clampitt v. St. Louis Southwestern R. Co. of Texas, Tex.Civ.App., 185 S.W. 342, 344.

CLEAN BILL OF HEALTH. One certifying that no contagious or infectious disease exists, or certifying as to healthy conditions generally without exception or reservation.

CLEAN BILL OF LADING. One without exception or reservation as to the place or manner of stowage of the goods, and importing that the goods are to be (or have been) safely and properly stowed under deck. The Delaware, 14 Wall. 596, 20 L.Ed. 779; The St. Johns N. F., C.C.A. N.Y., 272 F. 673, 674. One which contains nothing in the margin qualifying the words in the bill of lading itself. The Isla de Panay, C.C.A.N.Y., 292 F. 723, 730; Thomas Roberts & Co. v. Calmar S. S. Corp., D.C.Pa., 59 F.Supp. 203, 209.

CLEAN HANDS. Equitable relief may be denied on ground of deceit or impurity of motive, O'Brien v. Hamill, 264 N.Y.S. 557, 147 Misc. 709; fraud or wilful misconduct, Eresch v. Braecklein, C.C.A. Kan., 133 F.2d 12, 14; Margolis v. Burke, Sup., 53 N.Y.S.2d 157, 161, 162; unjust and unfair conduct, Dutch Maid Bakeries v. Schleicher, 58 Wyo. 374, 131 P.2d 630, 634; unlawful or inequitable conduct, Rhodes v. Miller, 179 So. 430, 432, 189 La. 288; Lodati v. Lodati, 52 N.Y.S.2d 119, 120, 268 App. Div. 1003; wrongdoing, Dales v. Muir, 351 Pa. 187, 40 A.2d 476, 477.

The maxim is confined to misconduct in relation to or connected with the matter in litigation. Teuscher v. Grogg, 136 Okl. 129, 276 P. 753, 760, 66 A.L.R. 143; Hartman v. Cohn, 350 Pa. 41, 38 A.2d 22, 25. It is inapplicable where to withhold relief would offend public morals more than to grant relief, Furman v. Furman, 34 N.Y.S.2d 699, 704, 178 Misc. 582; and where result will be to leave property in hands of one having no claim thereto or require further litigation, Harrell v. Allen, 183 Va. 722, 33 S.E.2d 222, 226. The act must prejudicially affect defendant, Wiley v. Wiley, 59 Cal.App.2d 840, 139 P.2d 950, 951. But it has been held that application of maxim is not limited to a case where the iniquitous action is one of which the moving party may personally complain. Leo Feist, Inc. v. Young, D.C.Wis., 46 F.Supp. 622, 628.

CLEAN OIL. Oil which has 3 per cent. or less by volume of water and sediment. Alamitos Land Co. v. Shell Oil Co., 3 Ca1.2d 396, 44 P.2d 573, 575.

CLEAN WATER. Water that is not filthy or polluted. U. S. v. Durst, D.C.W.Va., 59 F.Supp. 891, 894.

CLEAR. Obvious; beyond reasonable doubt; perspicuous; plain.

Free from all limitation, qualification, question, or shortcoming. Condorodis v. Kling, 33 Ohio App. 452, 169 N.E. 836, 838. Ex parte Williams, 128 Tex.Cr.R. 148, 79 S.W.2d 325, 326; Free from incumbrance, obstruction, burden, limitation, etc., Frank v. Murphy, 64 Ohio App. 501, 29 N.E. 2d 41, 43; Plain, evident, free from doubt or conjecture, also unincumbered, free from deductions or drawbacks, Ketch v. Smith, 131 Okl. 263, 268 P. 715, 717. That which can be seen without dimness, Bremner v. Marc Eidlitz & Son, 118 Conn. 666, 174 A. 172, 174.

CLEAR AND CONVINCING PROOF. Generally, this phrase and its numerous variations mean proof beyond a reasonable, *i. e.,* a well-founded doubt. Southwestern Bell Telephone Co. v. City of San Antonio, Tex., D.C.Tex., 4 F.Supp. 570, 573. Some cases give a less rigcrous, but somewhat uncertain, meaning, *viz.,* more than a preponderance but less than is required in a criminal case. O'Briant v. Lee, 212 N.C. 793, 195 S.E. 15, 20.

A higher degree of proof than weight of the evidence, Snyderwine v. McGrath, 343 Pa. 245, 22 A.2d 644, 647. Independent facts and circumstances which are, in opinion of court and jury, strong, Wright v. Austin, Tex.Civ.App., 175 S.W.2d 281, 284; it shall be found that witnesses are credible, that they distinctly remember facts to which they testify, that they narrate details exactly, and that their statements are true, McDonnell v. General News Bureau, C.C.A.Pa., 93 F.2d 898, 901. The degree of proof which will produce in the mind of the court a firm belief or conviction. In re Chappell, Ohio App., 33 N.E.2d 393, 397. Evidence that convinced a presumably unbiased and unprejudiced jury, Pegues v. Dilworth, 134 Tex. 169, 132 S.W.2d 582, 586. Proof sufficient to convince ordinarily prudent minded people. Rowland v. Holt, 253 Ky. 718, 70 S.W.2d 5, 9. The proof need not be conclusive. Hobart v. Hobart Estate Co., 26 Ca1.2d 412, 159 P.2d 958, 976.

CLEAR AND PRESENT DANGER. Immediately serious violence is expected or is advocated or past conduct furnishes reason to believe such advocacy is contemplated. United States v. Korner, D.C.Cal., 56 F.Supp. 242, 248.

CLEAR ANNUAL VALUE. The net yearly value to the possessor of the property, over and above taxes, interest on mortgages, and other charges and deductions. Shelton v. Campbell, 109 Tenn. 690, 72 S.W. 112.

CLEAR ANNUITY. The devise of an annuity "clear" means an annuity free from taxes (Hodgworth v. Crawley, 2 Atk. 376) or free or clear of legacy or inheritance taxes. In re Bispham's Estate, 24 Wkly.Notes Cas. (Pa.) 79.

CLEAR CHANCE. A chance is a clear chance if exercise of vigilance would have discovered helpless peril and avoided the injury. Leinbach v. Pickwick Greyhound Lines, 138 Kan. 50, 23 P.2d 449, 456, 92 A.L.R. 1.

CLEAR DAYS. If a certain number of clear days be given for the doing of any act, the time is to be reckoned exclusively, as well of the first day as the last. Hodgins v. Hancock, 14 Mees. & W. 120; State v. Marvin, 12 Iowa 502.

CLEAR EVIDENCE OR PROOF. Evidence which is positive, precise and explicit, which tends directly to establish the point to which it is adduced and is sufficient to make out a prima facie case. Reynolds v. Blaisdell, 23 R.I. 16, 49 A. 42.

It necessarily means a clear preponderance. It may mean no more than a fair preponderance of proof but may be construed as requiring a higher degree of proof. It may convey the idea, under emphasis, of certainty. It may be understood as meaning beyond doubt. The expression is equivocal and mischievous. Aubin v. Duluth St. Ry. Co., 169 Minn. 342, 211 N.W. 580, 583.

CLEAR LEGAL RIGHT. A right inferable as a matter of law from uncontroverted facts. Federal Land Bank of Springfield v. Pickard, 9 N.Y.S. 2d 696, 707, 169 Misc. 753.

CLEAR MARKET PRICE. Fair market price, In re Spitly's Estate, 124 Cal.App. 642, 13 P.2d 385, 386.

CLEAR MARKET VALUE. With regard to inheritance tax, highest price obtainable. In re Nicklas' Estate, 132 N.J.L. 450, 41 A.2d 122, 124; net value, Hamlen v. Martin, 128 N.J.Eq. 393, 16 A.2d 457, 459; sum which property would bring on a fair sale by a willing seller not obliged to sell to a willing buyer not obliged to buy, or fair market value, or cash value, In re Ryerson's Estate, 239 Wis. 120.

CLEAR RESIDUE. Addition of income from *funds,* used to pay decedent's debts, administration expenses, and general legacies, to residue of estate. In re Foster's Will, 256 N.Y.S. 383, 385, 143 Misc. 191.

CLEAR TITLE. Good title, Clark v. Ray, Tex. Civ.App., 96 S.W.2d 808, 813; marketable title, Gantt v. Harper, 82 Mont. 393, 267 P. 296, 298; contra, Frank v. Murphy, 64 Ohio App. 501, 29 N.E. 2d 41, 43; one free from incumbrance, obstruction, burden, or limitation. Frank v. Murphy, 64 Ohio App. 501, 29 N.E.2d 41, 43.

For a clear deed, see Rohr v. Kindt, 3 Watts & S. (Pa.) 563, 39 Am.Dec. 53; clear of expense; 2 Ves. & B. 341; clear of assessments; Peart v. Phipps, 4 Yeates (Pa.) 386; clear bill of lading; William Zoller Co. v. Hartford Fire Ins. Co., 272 Pa. 386, 116 A. 359, 362. See, also, Clean Bill of Lading.

CLEAR TITLE OF RECORD. Freedom from apparent defects, grave doubts, and litigious uncertainties; such title as a reasonably prudent person, with full knowledge, would accept. Tull v. Milligan, 173 Okl. 131, 48 P.2d 835, 842.

CLEAR VALUE. With regard to net value after payment of debts and expenses of administration, Bouse v. Hutzler, 180 Md. 682, 26 A.2d 767, 769, 141 A.L.R. 843; sum which, after deducting amount necessary for payment of such taxes, yielded the amount of the specific legacies where will directed that taxes should not be deducted from legacies. Bouse v. Hutzler, 180 Md. 682, 26 A.2d 767, 769, 141 A.L.R. 843.

CLEARANCE. In Maritime law. The right of a ship to leave port. The act of clearing or leaving port. The certificate issued by the collector of a port evidencing the power of the ship to leave port. Hamburg-American Steam Packet Co. v. U. S., C.C.A.N.Y., 250 F. 747, 759. Worcester, Dict.

In contract for exhibition of motion pictures, the interval of time between conclusion of exhibition in one theater and commencement of exhibition at another theater. Waxmann v. Columbia Pictures Corporation, D.C.Pa., 40 F.Supp. 108, 111.

CLEARANCE CARD. A letter given to an employee by his employer, at the time of his discharge or end of service, showing the cause of such discharge or voluntary quittance, the length of time of service, his capacity, and such other facts as would give to those concerned information of his former employment. Cleveland, C., C. & St. L. R. Co. v. Jenkins, 174 Ill. 398, 51 N.E. 811, 62 L.R.A. 922, 66 Am.St.Rep. 296.

CLEARING. The departure of a vessel from port, after complying with the customs and health laws and like local regulations.

In mercantile law. A method of making exchanges and settling balances, adopted among banks and bankers.

CLEARING-HOUSE. A device or an association, usually unincorporated, for adjustment and payment of daily balances between banks in a city. Andrew v. Farmers' & Merchants' Say. Bank of Moravia, 215 Iowa 1336, 245 N.W. 226, 229.

CLEARING LOAN. One made to a bond dealer while an issue of bonds are being sold. In re Stone's Will, 211 Wis. 518, 248 N.W. 446, 447.

CLEARING TITLE. Acts or proceedings necessary to render title marketable. Johnston v. Cox, 114 Fla. 243, 154 So. 206.

CLEARINGS. Method of making exchanges and settling balances among banks and bankers. Andrew v. Farmers' & Merchants' Say. Bank of Moravia, 215 Iowa 1336, 245 N.W. 226, 228.

CLEARLY. Visible, unmistakable, in words of no uncertain meaning. Johnson v. Grady County, 50 Oki. 188, 150 P. 497.

Beyond a question or beyond a reasonable doubt, Johnson v. Grady County, 50 Okl. 188, 150 P. 497, 502; honestly, straightforwardly, and frankly, Huntington Securities Corporation v. Busey, C.C.A.Ohio, 112 F.2d 368, 370; plainly, Huntington Securities Corporation v. Busey, C.C.A.Ohio, 112 F.2d 368, 370; without obscurity, without obstruction, without entanglement or confusion, without uncertainty. Commonwealth v. Scovern, 292 Pa. 26, 140 A. 611, 614.

CLEARLY ERRONEOUS. Findings when based upon substantial error in proceedings or misappli-

cation of law, Kauk v. Anderson, C.C.A.N.D., 137 F.2d 331, 333; or when unsupported by substantial evidence, or contrary to clear weight of evidence or induced by erroneous view of the law. Gasifier Mfg. Co. v. General Motors Corporation, C.C.A. Mo., 138 F.2d 197, 199; Smith v. Porter, C.C.A. Ark., 143 F.2d 292, 294.

CLEARLY EXPRESSED IN TITLE. Title must so express subject that lawmakers and people may not be left in doubt as to matters treated. Home Insurance Co. of New York v. Dahmer, 167 Misc. 893, 150 So. 650, 651.

CLEARLY PROVED. Preponderance of the evidence. Olson v. Union Oil Co. of California, Cal. App., 25 Cal.App.2d 627, 78 P.2d 446, 447.

Proof sufficient to satisfy mind of finder of fact. that *its* weight is such as to cause a reasonable person to accept the fact as established. In re Frihauf, 58 Wyo. 479, 135 P. 2d 427, 433.

CLEARLY REFLECTS THE INCOME. Any method of accounting which clearly reflects a reasonable allowance for depreciation. Chicago & N. W. R. Co. v. Commissioner of Internal Revenue, C.C. A.7, 114 F.2d 882, 885.

CLEMENT'S INN. An inn of chancery. See Inns, of Chancery.

CLEMENTINES. In canon law. The collection of decretals or constitutions of Pope Clement V., made by order of John XXII., his successor, who published it in 1317.

CLENGE. In old Scotch law. To clear or acquit of a criminal charge. Literally, to cleanse or clean.

CLEP AND CALL. In old Scotch practice. A solemn form of words prescribed by law, and used in criminal cases, as in pleas of wrong and unlaw.

CLERGY. The whole body of clergymen or ministers of religion. Also an abbreviation for "benefit of clergy." See Benefit of Clergy.

*Regular clergy.* Monks who lived *secundum regulas* (according to the *rules)* of their respective houses or societies were so denominated in old English Law in contradistinction to the parochial clergy, or "secular" clergy. 1 Chit. Bl. 387, note.

CLERGYABLE. In old English law. Allowing of, or entitled to, the benefit of clergy *(privilegium clericale).* Used of persons or crimes. 4 Bla. Com. 371. See Benefit of Clergy.

CLERGYMAN. Spiritual representative of church. In re Swenson, 183 Minn. 602, 237 N.W. 589, 591.

CLERICAL. Pertaining to clergymen; or pertaining to the office or labor of a clerk.

CLERICAL ERROR. Generally, a mistake in writing or copying. 1 L.Raym. 183; Los Angeles Shipbuilding & Dry Dock Corporation v. Los Angeles County, 22 Cal.App.2d 418, 71 P.2d 282; Franklin v. State, 240 Ala. 57, 197 So. 58, 59.

It may include error apparent on face of instrument, record, indictment or information, In re Goldberg's Estate, 10 Ca1.2d 709, *76* P.2d *508,* 512; error in respect of matters of record, Shotwell v. State, 135 Tex.Cr.R. 366, 120 S.W.2d 97; errors, mistakes, or omissions by clerk, writer, counsel, or judge which are not the result of exercise of judicial function; Pacific Finance Corporation of California v. La Monte, 64 Idaho 438, 133 P.2d 921, 922; Wilson v. City of Fergus Falls, 181 Minn. 329, 232 N.W. 322, 323; failure of clerk to enter order, Keller v. Cleaver, 67 P.2d 131, 133,• 20 Cal.App.2d 364; omission in statutory provision, Craig v. State, 164 S.W.2d 1007, 1008, 204 Ark. 798; order fixing tax rate below statutory rate, In re Jagnow's Estate, 266 N.Y.S. 785, 788, 148 Misc. 657; placing of case on calendar without notice, New England Furniture & Carpet Co. v. Willcuts, D.C.Minn., 55 F.2d 983, 987; purported order incongruous and irrelevant to surrounding recitals, Carpenter v. Pacific Mut. Life Ins. Co. of California, 14 Cal.2d 704, 96 P.2d 796, 799; signature by judge to judgment which does not express judicial desire or intention, Bastajian v. Brown, 19 Cal.2d 209, 120 P.2d 9, 12.

CLERICAL MISPRISION. Mistake or fraud perpetrated by clerk of court which is susceptible of demonstration by face of record, or a clerical error, which is an error by clerk in transcribing or otherwise apparent on the face of the record. Ballew v. Fowler, 285 Ky. 149, 147 S.W.2d 65, 66. But see Newman v. Ohio Valley Fire & Marine Ins. Co., 221 Ky. 616, 299 S.W. 559, 560.

CLERICAL TONSURE. The having the head shaven, which was formerly peculiar to clerks, or persons in orders, and which the coifs worn by serjeants at law are supposed to have been introduced to conceal. 1 Bl.Comm. 24, note t; 4 Bl. Comm. 367.

CLERICALE PRIVILEGIUM. In old English law. The clerical privilege; the privilege or benefit of clergy.

CLERICI DE CANCELLARIA; CLERICI DE CURSU. Clerks of the chancery. See Cursitors.

CLERICI NON PONANTUR IN OFFICIIS. Co. Litt. 96. Clergymen should not be placed in offices; *i. e.,* in secular offices. See Lofft, 508.

CLERIC! PRIENOTARIL The six clerks in chancery. 2 Reeve, Eng.Law, 251.

CLERICO ADMITTENDO. See Admittendo Clerico.

CLERICO CAPTO PER STATUTUM MERCATORUM. A writ for the delivery of a clerk out of prison, who was taken and incarcerated upon the breach of a statute merchant. Reg.Orig. 147.

CLERICO CONVICTO COMMISSO GAOLZE IN DEFECTU ORDINARII DELIBERANDO. An ancient writ, that lay for the delivery to his ordinary of a clerk convicted of felony, where the ordinary did not challenge him according to the privilege of clerks. Reg.Orig. 69.

CLERIC() INFRA SACROS ORDINES CONSTITUTO, NON ELIGENDO IN OFFICIUM. A writ directed to those who had thrust a bailiwick or other office upon one in holy orders, charging them to release him. Reg.Orig. 143.

CLERICUS. In old English law. A clerk or priest; a person in holy orders; a secular priest; a clerk of a court. An officer of the royal household, having charge of the receipt and payment of

moneys, etc. Fleta enumerates several of them, with their appropriate duties; as *clericus coquincs,* clerk of the kitchen; *clericus panetr' et butelr',* clerk of the pantry and buttery. Lib. 2, cc. 18, 19. In Roman law. A minister of religion in the Christian church; an ecclesiastic or priest. Cod. 1, 3; Nov. 3, 123, 137. A general term, including bishops, priests, deacons, and others of inferior order. Brissonius. Also of the amanuenses of the judges or courts of the king. Du Cange.

CLERICUS ET AGRICOLA ET MERCATOR, TEMPORE BELLI, UT ORET, COLAT, ET COMMUTET, PACE FRUUNTUR. 2 Inst. 58. Clergymen, husbandmen, and merchants, in order that they may preach, cultivate, and trade, enjoy peace in time of war.

CLERICUS MERCATI. In old English law. Clerk of the market. 2 Inst. 543.

CLERICUS NON CONNUMERETUR IN DUABUS ECCLESIIS. 1 Rolle. A clergyman should not be appointed to two churches.

CLERICUS PAROCHIALIS. In old English law. A parish clerk.

CLERIGOS. In Spanish law. Clergy; men chosen for the service of God. White, New Recop. b. 1, tit. 5, ch. 4.

CLERK. One who sells goods, waits on customers, or engages in clerical work such as bookkeeping, copying, transcribing, letter writing, tabulating, etc., a stenographer, etc., Appeal of Walker, 294 Pa. 385, 144 A. 288, 289; In re Goldman Stores, D.C.La., 3 F.Supp. 936, 937.

In New England, used to designate a corporation official who performs some of the duties of a secretary. As used in statute service on clerk of corporation, some general officer of the corporation, Baker v. New York Cent. R. Co., 16 N.Y.S.2d 78, 79, 258 App.Div. 854.

A person employed in a public office, or as an officer of a court, whose duty is to keep records or accounts. In re Allen, N.J.Sup., 95 A. 215, 216; Crawford v. Roloson, 254 Mass. 163, 149 N.E. 707, 709. See Clerk of Court.

A person serving a practicing solicitor under binding articles in England, for the purpose of being admitted to practice as a solicitor. Under exemption provision of Civil Service Law a private or confidential clerk of elective judicial officer. Neary v. O'Connor, 18 N.Y.S.2d 634, 637, 173 Misc. 696.

A person in holy orders; a clergyman; an individual attached to the ecclesiastical state, and who has the clerical tonsure. See 4 Bl.Comm. 366, 367.

CLERK OF ARRAIGNS. In English law. An assistant to the clerk of assise. His duties are in the crown court on circuit.

CLERK OF ASSISE. In English law. Officers who officiate *as* associates on the circuits. They record all judicial proceedings done by the judges on the circuit.

CLERK OF COURT. An officer of a court of justice who has charge of the clerical part of its business, who keeps its records and seal, issues process, enters judgments and orders, gives certified copies from the records, etc. Ross v. Heathcock, 57 Wis. 89, 15 N.W. 9; Gordon v. State, 2 Tex. App. 154. An assistant whose principal duty is to make correct memorial of court's orders and directions. People's Ditch Co. v. Foothill Irr. Dist., 123 Cal.App. 251, 11 P.2d 86, 88.

CLERK OF ENROLLMENTS. In English law. The former chief officer of the English enrollment office, *(q.* v.) He now forms part of the staff of the central office.

CLERK OF THE CROWN IN CHANCERY. See Crown Office in Chancery.

CLERK OF THE HOUSE OF COMMONS. An officer of the English house of commons appointed by the crown. He makes entries, remembrances, and journals of the things done and passed in the house. He signs all orders of the house, indorses the bills sent or returned to the lords, and reads whatever is required to be read in the house. He has the custody of all records and other documents. May, Parl.Pr. 236.

CLERK OF THE MARKET. The overseer or superintendent of a public market. In old English law, he was a *quasi* judicial officer, having power to settle controversies arising in the market between persons dealing there. Called *"clericus mercati."* 4 Bl.Comm. 275.

CLERK OF THE PARLIAMENTS. One of the chief officers of the house of lords. He is appointed by the crown, by letters patent. On entering office he makes a declaration to make true entries and records of the things done and passed in the parliaments, and to keep secret all such matters as shall be treated therein. May, Parl.Pr. 238.

CLERK OF THE PEACE. In English law. An officer whose duties are to officiate at sessions of the peace, to prepare indictments, and to record the proceedings of the justices, and to perform a number of special duties in connection with the affairs of the county.

CLERK OF THE PETTY BAG. See Petty Bag Office.

CLERK OF THE PRIVY SEAL. These officers attend the lord privy seal, or, in absence ox tile lora privy seal, the principal secretary of state. Their duty is to write and make out all things that are sent by warrant from the signet to the privy seal, and which are to be passed to the great seal; and also to make out privy seals (as they are termed) upon any special occasion of his majesty's affairs. Cowell.

CLERK OF THE SIGNET. An officer, in England, whose duty it is to attend on the king's principal secretary, who has the custody of the privy signet, as well for the purpose of sealing his majesty's private letters, as also grants which pass his majesty's hand by bill signed. Cowell.

CLERK OF THE TABLE. An official of the British House of Commons who advises the speaker on all questions of order.

CLERKS OF INDICTMENTS. Officers attached to the central criminal court in England, and to each circuit. They prepare and settle indictments against offenders, and assist the clerk of arraigns.

CLERKS OF RECORDS AND WRITS. Officers formerly attached to the English court of chancery, whose duties consisted principally in sealing bills of complaint and writs of execution, filing affidavits, etc. By the judicature (officers') act, 1879, they have been transferred to the central office of the supreme court, under the title of "Masters of the Supreme Court," and the office has been abolished. Sweet.

CLERKS OF SEATS. In the principal registry of the probate division of the English high court, they discharge the duty of preparing and passing the grants of probate and letters of administration, take bonds from administrators, receive *caveats* against a grant being made, etc. Sweet.

CLERKSHIP. The period which must be spent by a law-student in the office of a practising attorney before admission to the bar. 1 Tidd Pr. 61, et seq. In re Dunn, 43 N.J.Law, 359, 39 Am.Rep. 600.

In old English practice. The art of drawing pleadings and entering them on record in Latin, in the ancient court hand; otherwise called "skill of pleading in actions at the common law."

CLIENS. Lat. In the Roman law. A client or dependent. One who depended upon another as his patron or protector, adviser or defender, in suits at law and other difficulties. Dionys. ii. 10; Adams, Rom.Ant. 33.

CLIENT. A person who employs or retains an attorney, or counsellor, to appear for him in courts, advise, assist, and defend him in legal proceedings, and to act for him in any legal business. McCreary v. Hoopes, 25 Miss. 428; McFarland v. Crary, 6 Wend., N.Y., 297; Cross v. Riggins, 50 Mo. 335. It should include one who disclosed confidential matters to attorney while seeking professional aid, whether attorney was employed or not. Sitton v. Peyree, 117 Or. 107, 241 P. 62, 64.

CLIENTELA. In old English law. Clientship, the state of a client; and, correlatively, protection, patronage, guardianship.

CLIFFORD'S INN. An inn of chancery. See Inns of Chancery.

CLINICAL TESTS. Observations made of patient by physician or surgeon without the aid of instruments, apparatus or chemical examinations for the discovery of the existence or progress of disease or the patient's condition. Peterson v. Widule, 157 Wis. 641, 147 N.W. 966, 970, 52 L.R.A., N.S., 778.

CLIPPED SOVEREIGNTY. In the relations of the several states of the United States to other nations, the states have what is termed a clipped sovereignty. Anderson v. N. V. Transandine Handelmaatschappij, Sup., *28* N.Y.S.2d 547, 552.

CLITO. In Saxon law. The son of a king or emperor. The next heir to the throne; the Saxon adeling. Spelman.

CLOERE. A jail; a prison or dungeon.

CLOSE, v. To finish, terminate, complete, wind up; as, to "close" an account, a bargain, an estate, or public books, such as tax books. Bilaf sky v. Abraham, 183 Mass. 401, 67 N.E. 318.

To shut up, so as to prevent entrance or access by any person; as in statutes requiring saloons to be "closed" at certain times, which further implies an entire suspension of business, Texas Co. v. Texarkana Mach. Shops, Tex.Civ.App., 1 S.W. 2d 928, 931.

CLOSE, n. A...portion of land, as a field, Inaue, as by a hedge, fence, or other visible inclosure, 3 Bl.Comm. 209, or by an invisible ideal boundary founded on limit of title. levejAfftoita SSZ.

The Interest of a • erson in an partic iece • f :r , w e er actua y nc ose•or no Meade v. Watson, 67 Cal. 591, 8 Pac. 311.

In practice. The word means termination; winding up. Thus the close of the pleadings is where the pleadings are finished, *i. e.,* when issue has been joined.

CLOSE, *adj.* In practice. Closed or sealed' up. A term applied to writs and letters, as distinguished from those that are open or patent.

CLOSE COPIES. Copies of legal documents which might be written closely or loosely at pleasure; as distinguished from *office* copies.

CLOSE CORPORATION. See Corporation.

CLOSE-HAULED. In admiralty law, this nautical term means the arrangement or trim of a vessel's sails when she endeavors to make a progress in the nearest direction possible towards that point of the compass from which the wind blows. But a vessel may be considered as close-hauled, although she is not quite so near to the wind as she could possibly lie. Chadwick v. Packet Co., 6 El. & Bl. 771.

CLOSE JAIL EXECUTION. A body execution which has indorsed in or upon it the statement that the defendant ought to be confined in close jail. Ex parte Thompson, 111 Vt. 7, 9 A.2d 107.

CLOSE MOLDS. Molds in two parts, called the drag and the case (or cope) forming together a two-part flask, one part being placed over the other and each being impressed with one half of the matrix or pattern. Cole v. U. S., C.C.A.Colo., 269 F. 250, 252.

CLOSE ROLLS. Rolls containing the record of the close writs *(literce clausce)* and grants of the king, kept with the public records. 2 Bl. Comm. 346.

CLOSE SEASON. The season of the year or period of time in which the taking of particular game or fish is prohibited, or in which all hunting

or fishing is forbidden by law. State v. Theriault, 70 Vt. 617, 41 A. 1030, 43 L.R.A. 290, 67 Am.St.Rep. 695. *Cf.* Fence-Month.

CLOSE TO. Near; very near; immediately adjoining. Govier v. Brechler, 159 Wis. 157, 149 N. W. 740, 742.

CLOSE WRIT. See Writ.

CLOSED COURT. A term sometimes used to designate the Common Pleas Court of England when only serjeants could argue cases, which practice persisted until 1833.

CLOSED SEASON. The same as "close season" *(q. v.).*

CLOSED SHOP. Such shop exists where worker must be member of union as condition precedent to employment. Miners in General Group v. Hix, 123 W.Va. 637, 17 S.E.2d 810, 813.

CLOSED SHOP CONTRACT. A contract requiring employer to hire only union members and to discharge non-union members and requiring that employees, as a condition of employment, remain union members. Silva v. Mercier, Cal.App., 187 P.2d 60, 64.

CLOTHING WOOL. Short-stapled wool prepared by carding, as distinguished from "combing wool," which is long-stapled wool prepared by combing. *U.* S. v. Stone & Downer Co., 12 Ct.Cust.App. 557, 558.

CLOTURE. The procedure in deliberative assemblies whereby debate is closed.

Introduced in the English parliament in the session of 1882.

It is generally effected by moving the previous question. See Roberts, Rules of Order §§ 20, 58a.

CLOUD ON TITLE. An outstanding claim or incumbrance which, if valid, would affect or impair the title of the owner of a particular estate, and on its face has that effect, but can be shown by extrinsic proof to be invalid or inapplicable to the estate in que3tion. A conveyance, mortgage, judgment, tax-levy, etc., may all, in proper cases, constitute a cloud on title. Parker v. Vallerand, 136 Me. 519, 8 A.2d 594; Anderson v. Guenther, 144 Or. 446, 25 P.2d 146.

It is not necessary in West Virginia that claim be valid on its face. Gardner v. Buckeye Savings & Loan Co., 108 W.Va. 673, 152 S.E. 530, 532.

CLOUGH. A valley. Also an allowance for the turn of the scale, on buying goods wholesale by weight.

CLUB. A voluntary, incorporated or unincorporated association of persons for purposes of a social, literary, or political nature, or the like. A club is not a partnership. 2 Mees. & W. 172.

*Unincorporated Members' Club.* A society of persons each of whom contributes to the fund out of which the expenses of conducting the society are paid. Van Pelt v. Hilliard, 75 Fla. 792, 78 So. 693. 695, L.R.A.1918E, 639.

*Unincorporated Proprietary Club.* One the property and funds of which belong to a proprietor who usually conducts the club with a view to profit. Van Pelt v. Hilliard, 75 Fla. 792, 78 So. 693, 695.

CLUB-LAW. Rule of violence; regulation by force; the law of arms.

CLUTCH. A device introduced in the transmission, some place between the mechanism in which power is created and the mechanism to which it is applied, and which serves to make and break the connection between the two. Eclipse Mach. Co. v. Harley Davidson Motor Co., C.C.A.Pa., 252 F. 803, 806.

CLYPEUS, or CLIPEUS. In old English law. A shield; metaphorically one of a noble family. *Clypei prostrate,* - noble families extinct. Mat. Paris, 463.

C/O. A symbol meaning "care of." International Store Co. v. Barnes, Mo.App., 3 S.W.2d 1039, 1041.

CO. A prefix meaning with, in conjunction, joint, jointly, unitedly, and not separately, *e. g.,* co-trustees, co-executors, co-brokers. Brandenburger & Marx v. Heimberg, Mun.Ct.N.Y., 34 N.Y.S.2d 935, 938.

Also an abbreviation for "county," (Gilman v. Sheets, 78 Iowa 499, 43 N.W. 299,) and for "company," (Railroad. Co. v. People, 155 Ill. 299, 40 N.E. 599). It may also indicate a partnership (Jennette v. Coppersmith, 176 N.C. 82, 97 S.E. 54, 55).

COACH. Coach is a generic term. It is a kind of carriage, and is distinguished from other vehicles, chiefly, as being a covered box, hung on leathers, with four wheels. Turnpike Co. v. Neil, 9 Ohio 12; Turnpike Co. v. Frink, 15 Pick. (Mass.) 444. A term applied both to vehicles traveling over roads and upon rails. Bruce Transfer Co. v. Johnston, 287 N.W. 278, 280, 227 Iowa 50.

COADJUTOR. An assistant, helper, or ally; particularly a person appointed to assist a bishop who from age or infirmity is unable to perform his duty. Olcott v. Gabert, 86 Tex. 121, 23 S.W. 985. Also an overseer, (coadjutor of an executor,) and one who disseises a person of land not to his own use, but to that of another.

CO-ADMINISTRATOR. One who is a joint administrator with one or more others.

COADUNATIO. A uniting or combining together of persons; a conspiracy. 9 Coke, 56.

CO-ADVENTURER. One who takes part with others in an adventure or in a venture or business undertaking attended with risk. McRee v. Quitman Oil Co., 16 Ga.App. 12, 84 S.E. 487; Easter Oil Corporation v. Strauss, Tex.Civ.App., 52 S.W.2d 336, 344.

COAL NOTE. A species of promissory note, formerly in use in the port of London, containing the phrase "value received in coals." By the statute 3 Geo. II. c. 26, §§ 7, 8, these were to be protected and noted as inland bills of exchange. But this was repealed by the statute 47 Geo. III. sess. 2, c. 68, § 28.

COALITION. In French law. An unlawful agreement among several persons not to do a thing except on some conditions agreed upon; particularly, industrial combinations, strikes, etc.; a conspiracy.

CO-ASSIGNEE. One of two or more assignees of the same subject-matter.

COAST, v. To slide down hill upon snow or ice as on a sled; to ride, glide or move by or as by the force of gravity as on a bicycle without pedaling. Samuelson v. Sherrill, 225 Iowa 421, 280 N. W. 596, 599.

COAST, n. The edge or margin of a country bounding on the sea.

The term includes small islands and reefs naturally connected with the adjacent land, and rising above the surface of the water, but not shoals perpetually covered by water. U. S. v. Pope, 28 Fed.Cas. 630; Hamilton v. Menifee, 11 Tex. 751.

This word is particularly appropriate to the edge of the sea, while "shore" may be used of the margins of inland waters.

COAST GUARD. In English law. A body of officers and men raised and equipped by the commissioners of the admiralty for the defense of the coasts of the realm, and for the more ready manning of the navy in case of war or sudden emergency, as well as for the protection of the revenue against smugglers. Mozley & Whitley.

COAST WATERS. Tide waters navigable from the ocean by sea-going craft, the term embracing all waters opening directly or indirectly into the ocean and navigable by ships coming in from the ocean of draft as great as that of the larger ships which traverse the open seas. The Britannia, 153 U.S. 130, 14 S.Ct. 795, 38 L.Ed. 660; The Victory, D.C.Va., 63 F. 636; The Garden City, D.C. N.Y., 26 F. 773.

COASTER. A vessel plying exclusively between domestic ports, and usually engaged in domestic trade; not including pleasure yachts. Belden v. Chase, 150 U.S. 674, 14 S.Ct. 264, 37 L.Ed. 1218.

COASTING. Sliding down hill or incline on sled or car or riding bicycle, without working the pedals; Samuelson v. Sherrill, 225 Iowa 421, 280 N.W. 596, 599. Movement of sled or vehicle by momentum due to previously exerted force or force of gravity. Tyne v. B. F. Goodrich Co., 297 N.Y.S. 425, 428, 252 App.Div. 24; Bryant v. Market St. Ry. Co., Cal.App., 158 P.2d 18, 22.

COASTING TRADE. In maritime law. Commerce and navigation between different places along the coast of the United States. Commercial intercourse between different districts in different states, different districts in same state, or different places in same district, on sea-coast or on navigable river. Shannon v. Streckfus Steamers, 131 S.W.2d 833, 836, 279 Ky. 649.

COASTWISE. Vessels "plying coastwise" are those engaged in domestic trade, or plying between port and port in the United States, San Francisco v. California Steam Na$^{y}$. Co., 10 Cal. 504; Petition of Canadian Pac. Ry. Co., D.C.Wash., 278 F. 180, 202.

COAT ARMOR. Heraldic ensigns, introduced by Richard I. from the Holy Land, where they were first invented. Originally painted on shields of the Christian knights who went to the Holy Land during the crusades, to identify them. Wharton.

COBRA-VENOM REACTION. In medical jurisprudence. A method of serum-diagnosis of insanity from hremolysis by injections of venom of cobras or other serpents.

COCKBILL. To place the yards of a ship at an angle with the deck. Pub.St.Mass.1882, p. 1288.

COCKET, In English law. A seal belonging to the custom-house, or rather a scroll of parchment, sealed and delivered by the officers of the custom-house to merchants, as a warrant that their merchandises are entered; likewise a sort of measure. Fleta, lib. 2, c. ix.

COCKPIT. A name which used to be given to the judicial committee of the privy council, the council-room being built on the old cockpit of. Whitehall Place.

COCKSETUS. A boatman; a cockswain. Cowell.

COCOTTE. A woman who leads a fast life, one who gives herself up for money. Also a poached egg. Rovira v. Boget, 240 N.Y. 314, 148 N.E. 534, 535.

CODE. A collection, compendium or revision of laws. Chumbley v. People's Bank & Trust Co., 60 S.W.2d 164, 166,. 166 Tenn. 35. A complete system of positive law, scientifically arranged, and promulgated by legislative authority. Abbott; a system of rules. Wilentz v. Crown Laundry Service, 172 A. 331, 332, 116 N.J.Eq. 40. Any systematic body of law. Wall v. Close, 14 So.2d 19, 26, 203 La. 345.

A "Code" implies compilation of existing laws, systematic arrangement into chapters, subheads, table of contents, and index, and revision to harmonize 'conflicts, supply omissions, and generally clarify and make complete body of laws designed to regulate completely subjects to which they relate. Gibson v. State, 214 Ala. 38, 106 So. 231, 35:

The collection of laws *and constitutions made by order of the Emperor Justinian is distinguished by the appellation of "The Code," by way of eminence. See Code of Justinian.

A *code* is to be distinguished from a *digest.* Digests of statutes consist of a collection of existing statutes, while a code is promulgated as one new law covering the whole field of jurisprudence.

Code civil. The code which embodies the civil law of France.

It was promulgated in 1804. When Napoleon became emperor, the name was changed to "Code Napoleon," by which it is still often designated, though it is now officially styled by its original name of "Code Civil."

*Code de commerce.* A French code, enacted in 1807, as a supplement to the Code Napoleon, regulating commercial transactions, the laws of business, bankruptcies, and the jurisdiction and procedure of the courts dealing with these subjects.

*Code de procedure civil.* That part of the Code Napoleon which regulates the system of courts, their organization,

civil procedure, special and extraordinary remedies, and the execution of judgments.

*Code d'instruction criminelle.* A French code, enacted In 1808, regulating criminal procedure.

*Code Napoleon.* See Code Civil.

*Code* noir. Fr. The black code. A body of laws which formerly regtilated the institution of slavery in the French colonies.

*Code of Justinian.* The Code of Justinian *(Codex Justinianeus)* was a collection of imperial constitutions, compiled, by order of that emperor, by a commission, and promulgated A. D. 529. It comprised twelve books, and was the first of the four compilations of law which make up the *Corpus Juris Civilis.* This name is often met in a connection indicating that the entire *Corpus Juris Civilis* is intended, or, sometimes, the *Digest;* but its use should be confined to the *Codex.*

*Code penal.* The penal or criminal code of France, enacted in 1810.

CODEX. Lat. A code or collection of laws; particularly the Code of Justinian. Also a roll or volume, and a book written on paper or parchment.

CODEX GREGORIANUS. A collection of imperial constitutions made by Gregorius, a Roman jurist of the fifth century, about the middle of the century. It contained the constitutions from Hadrian down to Constantine. Mackeld.Rom.Law, § 63.

CODEX HERMOGENIANUS. A collection of imperial constitutions made by Hermogenes, a jurist of the fifth century. It was nothing more than a supplement to the Codex Gregorianus, (supra,) containing the constitutions of Diocletian and Maximilian. Mackeld.Rom.Law, § 63.

CODEX JUSTINIANEUS. A collection of imperial constitutions, made by a commission of ten persons appointed by Justinian, A.D. 528.

CODEX REPETITIE PRIELECTIONIS. The new code of Justinian; or the new edition of the first or old code, promulgated A.D. 534, being the one now extant. Mackeld.Rom.Law, § 78. Tayl.Civil Law, 22,

CODEX THEODOSIANUS. A code compiled by the emperor Theodosius the younger, A.D. 438. 1 Bl.Comm. 81.

It was a collection of all the imperial constitutions then in force. It was the only body of civil law publicly received as authentic in the western part of Europe till the twelfth century, the use and authority of the Code of Justinian being during that interval confined to the East. 1 Bl.Comm. 81.

CODEX VETUS. The old code. The first edition of the Code of Justinian; now lost. Mackeld. Rom.Law, § 70.

CODICIL. A supplement or an addition to a will'; it may explain, modify, add to, subtract from, qualify, alter, restrain or revoke provisions in will. In re Phelps' Will, 232 N.Y.S. 418, 421, 133 Misc. 450; Butler University v. Danner, 114 Ind.App. 236, 50 N.E.2d 928, 932; In re Cazaurang's Estate, 42 Cal.App.2d 796, 110 P.2d 138; Blackford v. Anderson, 226 Iowa 1138, 286 N.W. 735, 743; Adams v. Foley, 360 Ohio App. 295, 173 N.E. 197, 198.

Usually it does not supersede or totally revoke the will. Holcomb v. Holcomb, 159 So. 564, 566, 173 Miss. 192; but is part of the will, Knebelkamp v. Acosta, 114 S.W.2d 737, 739, 272 Ky. 506; Succession of Patterson, 188 La. 635, 177 So. 692, 694; Simmons v. Gunn, 156 Va. 305, 157 S.E. 573, 574 ; and may confirm, reexecute, revive or republish the will, Des Portes v. Des Portes, 157 S.C. 407, 154 S.E. 426, 429; In re Warne's Estate, 302 Pa. 386, 153 A. 688, 690; United States *v.* Moore, 197 Ark. 664, 124 S.W.2d 807, 809. It must be executed with same solemnity as a will. Adams v. Foley, 36 Ohio App. 295, 173 N.E. 197, 198.

CODICILLUS. In the Roman law. A codicil; an informal and inferior kind of will, in use among the Romans.

CODIFICATION. Process of collecting and arranging the laws of a country or state into a code, i. *e.,* into a complete system of positive law, scientifically ordered, and promulgated by legislative authority.

COEMPTIO. One of the modes in which marriage was contracted among the Romans. Adams, Rom.Ant. 501.

CO-EMPTION. The act of purchasing the whole quantity of any commodity. Wharton.

CO-EQUAL. To be or become equal to; to have the same quantity, the same value, the same degree or rank, or the like, with; to be commensurate with. State ex rel. Com'rs of Land Office v. Board of Com'rs of Nowata County, 166 Okl. 78, 25 P.2d 1074, 1077.

COERCE. Compelled to compliance; constrained to obedience, or submission in a vigorous or forcible manner. Fluharty v. Fluharty, 8 W.W.Harr. 487, 193 A. 838, 840.

COERCION. Compulsion; constraint; compelling by force or arms. Fluharty v. Fluharty, Del. Super., 8 W.W.Harr. 487, 193 A. 838, 840; Santer v. Santer, 115 Pa.Super. 7, 174 A. 651, 652.

It may be actual, direct, or positive, as where physical force is used to compel act against one's will, or implied, legal or constructive, as where one party is constrained by subjugation to other to do what his free will would refuse. Metro-Goldwyn-Mayer Distributing Corporation v. Cocke, Tex.Civ.App., 56 S.W.2d 489; Fluharty v. Fluharty, 8 W. W.Harr. 487, 193 A. 838, 840. It may be actual or threatened exercise of power possessed, or supposedly possessed. In re New York Title & Mortgage Co., 271 N.Y.S. 433, 150 Misc. 827; Weir v. McGrath, D.C.Ohio, 52 F.2d 201, 203.

As used in testamentary law, any pressure by which testator's action is restrained against his free will in the execution of his testament. Max Ams Mach. Co. v. International Ass'n of Machinists, Bridgeport Lodge, No. 30, 92 Conn. 297, 102 A. 706, 709; Hughes v. Leonard, 66 Colo. 500, 181 P. 200, 203, 5 A.L.R. 817.

Duress and coercion are not synonymous though their meanings often shade into one another. McKenzie-Hague Co. v. Carbide & Carbon Chemicals Corporation, C.C.A. Minn., 73 F.2d 78, 85.

CO-EXECUTOR. One who is a joint executor with one or more others. See, also, Joint Executors.

COFFEE-HOUSE.. A house of entertainment where guests are supplied with coffee and other refreshments, and sometimes with lodging. Century Dict. A coffee-house is not an inn. Thompson v. Lacy, 3 Barn. & Ald. 283; Corn. v. Woods, 4 Ky.Law Rep. 262; Potson v. City of Chicago, 304 222, 136 N.E. 594, 596.

COFFERER OF THE QUEEN'S HOtSEHOLD, In English law. A principal officer of the royal establishment, next under the controller, who, in the countinghouse and elsewhere, had a special charge and oversight of the other officers, whose wages he paid.

COGITATIONIS P(ENAM NEMO PATITUR. No one is punished for his thoughts. Dig. 48, 19, 18.

COGNAC. A distilled brandy, containing more than one-half of 1 per centum of alcohol. Benson v. U. S., C.C.A.Tex., 10 F.2d 309, 310.

COGNATES. (Lat. *cognati.)* Relations by the mother's side, or by females. Mackeld.Rom.Law, § 144. A common term in Scotch law. Ersk.Inst. 1, 7, 4.

COGNATI. Lat. In the civil law. Cognates; relations by the mother's side. 2 Bl.Comm. 235. Relations in the line of the mother. Hale, Corn. Law, c. xi. Relations by or through females.

COGNATIO. Lat.

In the civil law. Cognation. Relationship, or kindred generally. Dig. 38, 10, 4, 2; Inst. 3, 6, pr.

Relationship through females, as distinguished from agn-atio, or relationship through males. *Agnatio* a *patre sit, cognatio a* matre. Inst. 3, 5, 4. See Agnatio.

In Canon law. Consanguinity, as distinguished from affinity. 4 Reeve, Eng.Law, 56-58. Consanguinity, as including affinity. Id.

COGNATION. In the civil law. Signifies generally the kindred which exists between two per. sons who are united by ties of blood or family, or both.

Civil *cognation* is that which proceeds alone from the ties of families, as the kindred between the adopted father and the adopted child.

*Mixed cognation* is that which unites at the same time the ties of blood and family, as that which exists between brothers the issue of the same lawful marriage. Inst. 3. 6; Dig. 38. 10.

*Natural cognation is* that which is alone formed by ties of blood; such is the kindred of those who owe their origin to *an* illicit connection, either *in* relation to their ascendants or collaterals.

COGNATUS. Lat. In the civil law. A relation by the mother's side; a cognate.

A relation, or kinsman, generally.

COGNITIO.

In old English law. The acknowledgment of a fine; the certificate of such acknowledgment.

In the Roman law. The judicial examination or hearing of a cause.

COGNITIONES. Ensigns and arms, or a military coat painted with arms. Mat.Par. 1250.

COGNITIONIBUS MITTENDIS. In English law. A writ to a justice of the common pleas, or other, who has power to take a fine, who, having taken the fine, defers to certify it, commanding him to certify it. Now abolished. Reg.Orig. 68.

COGNITIONIS CAUSIE. In Scotch practice. A name given to a judgment or decree pronounced by a court, ascertaining the amount of a debt against the estate of a deceased landed proprietor, on cause shown, or after a due investigation. Bell.

COGNITOR. In the Roman law. An advocate or defender in a private cause; one who defended the cause of a person who was present. Calvin. Lex.Jurid.

COGNIZABLE. Capable of being tried or examined before a designated tribunal, State v. Wilmot, 51 Idaho 233, 4 P.2d 363, 364; within jurisdiction of court or power given to court to adjudicate controversy. Samuel Goldwyn, Inc. v. United Artists Corporation, C.C.A.Del., 113 F.2d 703, 707.

COGNIZANCE. Jurisdiction, or the exercise of jurisdiction, or power to try and determine causes; judicial examination of a matter, or power and authority to make it. Clarion County v. Hospital, 111 Pa. 339, 3 A. 97.*

Judicial notice or knowledge; the judicial hearing of a cause; acknowledgment; confession; recognition.

Claim of cognizance or of conusance. See Claim of Cognizance or of Conusance.

Judicial cognizance. See Judicial.

The term also applies to a power granted by the king to a city or town to hold pleas within it. 11 East, 543; 1 W. Bla. 454; 3 Bla.Com. 298. An acknowledgment by defendant or deforciant in fine that the land belongs to, or is the right of, the complainant, 12 Ad. & El. 259. An answer in replevin, by which defendant acknowledges taking of the goods and want of title, but justifies on ground that the taking was by command of one entitled to the property. Lawes, Pl. 35; 2 Bla.Com. 350. Inhabitants of Sturbridge v. Winslow. 21 Pick., Mass., 87; Noble v. Holmes, 5 Hill, N.Y., 194.

COGNIZEE. The party to whom a fine was levied. 2 Bl.Comm. 351.

COGNIZOR. In old conveyancing. The party levying a fine. 2 Bl.Comm. 350, 351.

COGNOMEN.

In English law. A surname. A name added to the *nomen* proper, or name of the individual; a name descriptive of the family.

In Roman law. A man's family name.

The first name (prcenomen) was the proper *name* of the individual; the second *(nomen)* indicated the *gees* or tribe to which he belonged; while the third *(cognomen)* denoted his family or house. The *agnomen* was added on account of some particular event, as a further distinction. Vicat. See Cas. *temp.* Hardw. 286; 6 Co. 65.

COGNOMEN MAJORUM EST EX SANGUINE TRACTUM, HOC INTRINSECUM EST; AGNOMEN EXTRINSECUM AB EVENTU. 6 Coke, 65. The cognomen is derived from the blood of ancestors, and is intrinsic; an agnomen arises from an event, and is extrinsic.

COGNOVIT. Defendant has confessed judgment and justice of claim, Dyer v. Johnson, Tex.Civ. App., 19 S.W.2d 421, 422. Written authority of

debtor and his direction for entry of judgment against him. Blott v. Blott, 227 Iowa 1108, 290 N.W. 74, 76.

COGNOVIT ACTIONEM. (He has confessed the action.) A. defendant's written confession of action against him. It is usually upon 'condition; is supposed to be given in court; and impliedly authorizes plaintiff's attorney to sign judgment and issue execution. Mallory v. Kirkpatrick, 54 N.J. Eq. 50, 33 A. 205.

COHABIT or COHABITATION. Dwelling together. Hunt v. Hunt, 172 Miss. 732, 161 So. 119, 121, Johnson v. Commonwealth, 152 Va. 965, 146 S.E. 289, 291. Intercourse together as husband and wife. State v. Hoffman, 68 N.D. 610, 282 N.W. 407, 409. Living, or abiding or residing together as man and wife. Jones v. State, 182 Tenn. 60, 184 S.W.2d 167, 169; State v. Barlow, 107 Utah 292, 153 P.2d 647, 651; In re Miller's Estate, 182 Okl. 534, 78 P.2d 819, 827.

It may mean copulation or sexual intercourse, Bracksmayer v. Bracksmayer, Sup., 22 N.Y.S.2d 110, 112; as in divorce statutes, Varnell v. Varnell, 182 S.W.2d 466, 467, 207 Ark. 711; De Berry v. De Berry, 115 W.Va. 604, 177 S. E. 440, 441; or promiscuous and casual relations, as in pandering statute, Boykin v. U. S., 130 F.2d 416, 421, 76 U.S.App.D.C. 147. But in some circumstances occasional acts of sexual intercourse may be insufficient proof. Cutrer v. State, 154 Miss. 80, 121 So. 106, 107.

COHABITING IN STATE OF ADULTERY OR FORNICATION. Living together as husband and wife. Martin v. State, 89 Ind.App. 107, 165 N.E. 763.

Proof must establish at least one act of sexual intercourse, or facts from which such act may reasonably be inferred. Warner v. State, 202 Ind. 479, 175 N.E. 661, 663, 74 A.L.R. 1357.

COHAEREDES UNA PERSONA CENSENTUR, PROPTER UNITATEM JURIS QUOD HABENT, Co.Litt. 163. Co-heirs are deemed as one person, on account of the unity of right which they possess.

COHERES. Lat. In civil and old English law. A co-heir, or joint heir.

COHAN RULE. Where part of expenditures by taxpayers are of deductible nature as ordinary and necessary business expense are unidentifiable, 50% of expenditures are allowed as deduction. Poletti v. C. I. R., C.A.Mo., 351 F.2d 345, 349.

CO-HEIR. One of several to whom an inheritance descends.

CO-HEIRESS. A joint heiress. A woman who has an equal share of an inheritance with another woman.

COHERER. In wireless telegraphy, the "detector" or "coherer" and "wave responsive device" is a device by which the electromagnetic waves cause the indicator to respond. National Electric Signaling Co. v. Telefunken Wireless Telegraph Co. of United States, C.C.A.N.Y., 221 F. 629, 631.

COHUAGIUM. A tribute made by those who meet promiscuously in a market or fair. Du Cange.

COIF. A title given to serjeants at law, who are called "serjeants of the coif," from the coif they wear on their heads. The use of this coif at first was to cover the clerical tonsure, many of the practicing serjeants being clergymen who had abandoned their profession. It was a thin linen cover, gathered together in the form of a skull or helmet; the material being afterwards changed into white silk, and the form eventually into the black patch at the top of the forensic wig, which is now the distinguishing mark of the degree of serjeant at law. (Cowell; Foss, Judg.; 3 Steph. Comm. 272, note.) Brown.

COIN, v. To fashion pieces of metal into a prescribed shape, weight, and degree of fineness, and stamp them with prescribed devices, by authority of government, in order that they may circulate as money, Legal Tender Cases, 12 Wall. 484, 20 L. Ed. 287; Thayer v. Hedges, 22 Ind. 301; Hague v. Powers, 39 Barb. (N.Y.) 466, or to invent words or phrases.

COIN, n. Pieces of gold, silver, or other metal, fashioned into a prescribed shape, weight, and degree of fineness, and stamped, by authority of government, with certain marks and devices, and put into circulation as money at a fixed value, Corn. v. Gallagher, 16 Gray, Mass., 24p; Latham v. U. S., 1 Ct.C1. 150; Borie v. Trott, 5 Phila., Pa., 403, or any metal disc, State v. Kelleher, 127 A. 503, 504, 2 W.W.Harr., Del., 559.

Strictly speaking, coin differs from money, as the species differs from the genus. Money is any matter, whether metal, paper, beads, shells, etc., which has currency as a medium in commerce. Coin is a particular species, always made of metal, and struck according to a certain process called "coinage." Wharton.

COINAGE. The process or the function of coining metallic money; also the great mass of metallic money in circulation. Meyer v. Roosevelt, 25 How. Prac., N.Y., 105; U. S. v. Otey, C.C.Or., 31 F. 70.

COINSURANCE. A relative division of risk between the insurer and the insured, dependent upon the relative amount of the policy and the actual value of the property insured, and taking effect only when the actual loss is partial and less than the amount of the policy; the insurer being liable to the extent of the policy for a loss equal to or in excess of that amount. Buse v. National Ben Franklin Ins. Co. of Pittsburg, Pa., 160 N.Y. S. 566, 568, 96 Misc. 229.

COITUS. Sexual intercourse; carnal copulation; coition.

COJUDICES. Lat. In old English law. Associate judges having equality of power with others.

COKE. Partially consumed bituminous coal, from which the volatile constituents have been burned away, or partly graphitized carbon, whose fiber has been affected by escaping and burning gases, so that it is lighter than coal, although its substance is hard and dense. Mitchell v. Connellsville Central Coke Co., C.C.A.Pa., 231 F. 131, 137; Otto Coking Co. v. Koppers Co., C.C.A.Del., 258 F. 122, 131.

COKE'S INSTITUTES. See Institutes.

COLD BLOOD. Used in common parlance to designate a willful, deliberate, and premeditated homicide. Skeggs v. State, 24 Ala.App. 307, 135 So. 431, 432.

COLD WATER ORDEAL. The trial which was anciently used for the common sort of people, who, having a cord tied about them under their arms, were cast into a river; if they sank to the bottom until they were drawn up, which was in a very short time, then were they held guiltless; but such as did remain upon the water were held culpable, being, as they said, of the water rejected and kept up. Wharton.

COLIBERTUS. In feudal law. One who, holding in free socage, was obliged to do certain services for the lord. A middle class of tenants between servile and free, who held their freedom of tenure on condition of performing certain services. Said to be the same as the *conditionales*. Cowell.

COLLAPSIBLE CORPORATION. In income tax law, for purpose of determining whether gain from the sale or exchange of stock is gain from the sale or exchange of a capital asset or gain from the sale or exchange of property which is not a capital asset, a corporation formed or availed of principally for the manufacture, construction, or production of property, or for the holding of stock in a corporation so formed or availed of, with a view to the sale or exchange of stock by its shareholders, or a distribution to its shareholders, prior to the realization by such corporation of a substantial part of the net income to be derived from such property, and the realization by such shareholders of gain attributable to such property. 26 U.S.C.A. § 117.

COLLATERAL. By the side; at the side; attached upon the side. Not lineal, but upon a parallel or diverging line. Additional or auxiliary; supplementary; co-operating; accompanying as a secondary fact, or acting as a secondary agent; related to, complementary; accompanying as a co-ordinate, City Investment & Loan Co. v. Wichita Hardware Co., Tex.Civ.App., 57 S.W.2d 222, 223; collateral security, Pepper v. Beville, 100 Fla. 97, 129 So. 334, 337.

As to collateral "Consanguinity," "Descent," "Estoppel," "Guaranty," "Issue," "Limitation," "Negligence," "Power," "Proceeding," and "Warranty," see those titles.

COLLATERAL ACT. In old practice. The name "collateral act" was given to any act (except the payment of money) for the performance of which a bond, recognizance, etc., was given as security.

COLLATERAL ANCESTORS. A phrase sometimes used to designate uncles and aunts, and other collateral antecessors, who are not strictly ancestors. Banks v. Walker, 3 Barb.Ch. (N.Y.) 438, 446.

COLLATERAL ASSURANCE. That which is made over and above the principal assurance or deed itself.

COLLATERAL or INDIRECT ATTACK. On a judicial proceeding, an attempt to avoid, defeat, or evade it, or deny its force and effect, in some incidental proceeding not provided by law for the express purpose of attacking it. May v. Casker, 188 Okl. 448, 110 P.2d 287, 290. On a judgment, any proceeding in which the integrity of a judgment is challenged, except those made in the action wherein the judgment is rendered or by appeal. Edward Thompson Co. v. Thomas, 49 F.2d 500, 60 App.D.C. 118; In re Peterson's Estate, 12 Wash.2d 686, 123 P.2d 733, 751.

An attempt to impeach the judgment by matters dehors the record in an action other than that in which it was rendered ; an attempt to avoid, defeat, or evade it, or deny its force and effect in some incidental proceeding not provided by law for the express purpose of attacking it; any proceeding which is not instituted for the express purpose of annulling, correcting, or modifying such decree, or an objection, incidentally raised in the course of a proceeding, which presents an issue collateral to the issues made by the pleadings. Trustees of Somerset Academy v, Picher, C.C.A. Me., 90 F.2d 741, 743.

COLLATERAL ESTOPPEL. The collateral determination of a question by a court having general jurisdiction Of the subject. Small v. Haskins, 26 Vt. 209.

Conclusiveness of judgment in prior action where subsequent action is upon a different cause of action. Babcock v. Babcock, 63 Cal.App.2d 94, 146.P.2d 279, 281.

Where complaint in a divorce action alleged that there was no community property, and divorce decree found that all allegations of complaint were true and sustained by evidence, the decree was a conclusive determination that husband's insurance policies were not community property, and under the doctrine of "collateral estoppel" divorced wife was estopped from litigating that issue upon husband's death. Maxwell v. Maxwell, 66 Cal.App.2d 549, 152 P.2d 530, 532.

COLLATERAL FACTS. Such as are outside the controversy, or are not directly connected with the principal matter or issue in dispute. Summerour v. Felker, 102 Ga. 254, 29 S.E. 448; Garner v. State, 76 Miss. 515, 25 So. 363; Jones v. State, 70 Ga.App. 431, 28 S.E.2d 373, 386.

COLLATERAL FRAUD. See Fraud.

COLLATERAL IMPEACHMENT. See Collateral Attack.

COLLATERAL INHERITANCE TAX. A tax levied upon the collateral devolution of property by will or under the intestate law. Perfection Tire & Rubber Co. v. Kellogg-Mackay Equipment Co., 194 Iowa 523, 187 N.W. 32, 33.

COLLATERAL KINSMEN. Those who descend from one and the same common ancestor, but not from one another.

COLLATERAL LINE. See Descent.

COLLATERAL PROMISE. A promise merely super-added to the promise of another, he remaining primarily liable. Fairbanks v. Barker, 115 Me. 11, 97 A. 3, 5; Miller v. Davis, 168 Ky. 661, 182 S.W. 839, 840.

COLLATERAL SECURITY. A security given in addition to the direct security, and subordinate to it, intended to guaranty its validity or convertibili-

ty or insure its performance; so that, if the direct security fails, the creditor may fall back upon the collateral security. Butler v. Rockwell, 23 P. 462, 14 Colo. 125; McCormick v. Bank, C.C.Ind., 57 F. 110; Perfection Tire & Rubber Co. v. Kellogg-Mackay Equipment Co.,_194 Iowa 523, 187 N.W. 32, 33; Barbin v. Moore, 85 N.H. 362, 159 A. 409, 415, 83 A.L.R. 62.

Collateral security, in bank phraseology, means some security additional to the personal obligation of the borrower. Shoemaker v. Bank, 2 Abb., U.S., 423, Fed.Cas.No.12,-801, or pledge of negotiable paper, shares of corporate stock, and the like. Turner v. Commercial Savings Bank, 17 Ga.App. 631, 87 S.E. 918; A. H. Averill Machinery Co. v. Bain, 50 Mont. 512,-148 P. 334.

COLLATERAL UNDERTAKING. "Collateral" and "original" have become the technical terms whereby to distinguish promises that are within, and such as are not within, the statute of frauds. Elder v. Warfield, 7 Har. & J., Md., 391; Turner v. Commercial Savings Bank, 17 Ga.App. 631, 87 S. E. 918.

COLLATERAL'S ET SOCH. The ancient title of masters in chancery.

COLLATIO BONORUM. Lat. In the civil law. The obligation on successors to an inheritance to return to the common inheritance gifts received from the ancestor during his lifetime. In re Farmers' Loan & Trust Co., 163 N.Y.S. 961, 967, 99 Misc. 420; In re Farmers' Loan & Trust Co., 168 N.Y.S. 952, 956, 181 App.Div. 642. A joining together or contribution of goods into a common fund.

This occurs where a portion of money, advanced by the father to a son or daughter, is brought into *hotchpot,* in order to have an equal distributory share of his personal estate at his death. See Collation.

COLLATIO SIGNORUM. In old English law. A comparison of marks or seals. A mode of testing the genuineness of a seal, by comparing it with another known to be genuine. Adams. See Bract. fol. 389b.

COLLATION. It is the bringing into the estate of an intestate an estimate of the value of advancements made by the intestate to his or her children in order that the whole may be divided in accordance with the statute of descents. In re Howlett's Estate, 275 Mich. 596, 267 N.W. 743, 744.

It is synonymous with "hotchpot." Moore v. Freeman, 50 Ohio St. 592, 35 N.E. 502.

Civil Law

The collation of goods is the supposed or real return to the mass of the succession which an heir makes of property which he received in advance of his share or otherwise, in order that such property may be divided together with the other effects of the succession. Civ.Code La. art. 1227; Miller v. Miller, 105 La. 257, 29 So. 802; Succession of Thompson, 9 La.Ann. 96.

The fundamental basis of doctrine is legal presumption that ancestor intended absolute equality among his descendants in final distribution of his property, that donation by him during his lifetime to any one of them was merely advancement d'hoirie or advance on donee's hereditary share to establish him in life or for some other useful purpose, and that ancestor Intended to reestablish equality among his descendants in final partition of his estate. Le Blanc v. Volker, La.App., 198 So. 398, 401.

Ecclesiastical Law

The act by which the bishop who has the bestowing of a benefice gives it to an incumbent. 2 Bla.Com. 22.

Practice

The comparison of a copy with its original to ascertain its correctness; or the report of the officer who made the comparison.

COLLATION OF SEALS. When upon the same label one seal was set on the back or reverse of the other. Wharton.

COLLATION TO A BENEFICE. In ecclesiastical law. This occurs where the bishop and patron are one and the same person, in which case the bishop cannot present the clergyman to himself, but does, by the one act of collation or conferring the benefice, the whole that is done in common cases both by presentation and institution. 2 Bl.Comm. 22.

COLLATIONE FACTA UNI POST MORTEM ALTERIUS. A writ directed to justices of the common pleas, commanding them to issue their writ to the bishop, for the admission of a clerk in the place of another presented by the crown, where there had been a demise of the crown during a suit; for judgment once passed for the king's clerk, and he dying before admittance, the king may bestow his presentation on another. Reg. Orig. 31.

COLLATIONE HEREMITAGH. In old English law. A writ whereby the king conferred the keeping of an hermitage upon a clerk. Reg.Orig. 303, 308.

COLLECT. To gather together; to bring scattered things (assets, accounts, articles of property) into one mass or fund; to assemble.

To collect a debt or claim is to obtain payment or liquidation of it, either by personal solicitation or legal proceedings. Isler v. National Park Bank of New York, 239 N.Y. 462, 147 N.E. 66, 68.

COLLECT ON DELIVERY. See C. 0. D.

COLLECTIBLE. Debts, obligations, demands, liabilities that one may be made to pay by means of legal process. Shanahan v. State, 142 Md. 616, 121 A. 636, 640.

COLLECTION AGENCY. A concern which collects all kinds of claims for others. McCarthy v. Hughes, 36 R.I. 66, 88 A. 984, 985, Ann.Cas.1915D, 26.

COLLECTION OF ILLEGAL FEES. Collection by public official of fees in excess of those fixed by law for certain services. Parker v. Morgan, 48 Utah 405, 160 P. 764, 765.

COLLECTIVE BARGAINING. As contemplated by National Labor Relations Act is a procedure looking toward making of collective agreements

between employer arid accredited representatives of employees concerning wages, hours, and other conditions of employment, and requires that parties deal with each other with open and fair minds and sincerely endeavor to overcome obstacles existing between them to the end that employment relations may be stabilized and obstruction to free flow of commerce prevented. National Labor Relations Act § 8(5), 29 U.S.C.A. § 158(5). Rapid Roller Co. v. National Labor Relations Board, C.C.A.7, 126 F.2d 452, 460.

The essence of "collective bargaining" is the freedom of choice of employees in selection of their bargaining representative. National Labor Relations Act § 1 et seq., 29 U.S.C.A. § 151 et seq. National Labor Relations Board v. American Rolling Mill Co., C.C.A.6, 126 F.2d 38, 41.

"Collective bargaining," within provision of National Labor Relations Act providing that a refusal to bargain collectively should be an unfair labor practice, does not require employer to reach an agreement, but does require sincere negotiations with representatives of employees. National Labor Relations Act § 8(5), 29 U.S.C.A. § 158(5). National Labor Relations Board v. Biles Coleman Lumber Co., C.C.A.9, 98 F.2d 18, 22.

COLLECTIVE BARGAINING AGREEMENT. Agreement between an employer and a labor union which regulates terms and conditions of employment. Railway Mail Ass'n v. Murphy, 44 N.Y.S. 2d 601, 605, 608, 180 Misc. 868; McNeil v. Peoples Life Ins. Co., D.C.Mun.App., 43 A.2d 293, 294. See, also, "Collective Labor Agreement" and "Trade Agreement."

COLLECTIVE LABOR AGREEMENT. Also called "trade agreement". Bargaining agreement as to wages and conditions of work entered into by groups of employees, usually organized into a brotherhood or union on one side and groups of employers or corporations on the other side. Brisbin v. E. L. Oliver Lodge No. 335 of Brotherhood of Railway Clerks, 134 Neb. 517, 279 N.W. 277, 283; Rentschler v. Missouri Pac. R. Co., 126 Neb. 493, 253 N.W. 694, 696, 95 A.L.R. 1.

It becomes a binding contract when it is adopted into and made a part of the individual contract of each employee, and a breach of its terms will give rise to a cause of action by either party.

COLLECTOR. One appointed to receive taxes or other impositions: as, collector of taxes, collector of rhilitia fines, etc. A person appointed by a private person to collect the credits due him.

COLLECTOR OF DECEDENT'S ESTATE. A person temporarily appointed by the probate court to collect rents, assets, interest, bills receivable, etc., of a decedent's estate, and act for the estate in all financial matters requiring immediate settlement. Such collector is usually appointed when there is protracted litigation as to the probate of the will, or as to the person to take out administration, and his duties cease as soon as an executor or administrator is qualified.

COLLECTOR OF THE CUSTOMS. An officer of the United States, appointed for the term of four years. Act May 15, 1820, § 1; 3 Story, U.S.Laws, 1790 (19 U.S.C.A. § 5). Rev.Stat.U.S. § 2613 (19 U.S.C.A. § 5). His general duties are defined in § 2621 (19 U.S.C.A. § 33).

COLLECTION. Indorsement "for collection." See For Collection.

COLLEGA. In the civil law. One invested with joint authority. A colleague; an associate.

COLLEGATARIUS. Lat. In the civil law. A co-legatee. Inst. 2, 20, 8.

COLLEGATARY. A co-legatee; a person who has a legacy left to him in common with other persons.

COLLEGE. An organized assembly or collection of persons, established by law, and empowered to co-operate for the performance of some special function or for the promotion of some common object, which may be educational, political, ecclesiastical, or scientific in its character.

The assemblage of the cardinals at Rome *is* called a "college." So, in the United States, the body of presidential electors is called the "electoral college."

In the most common use of the word, it designates an institution of learning (usually incorporated) which offers instruction in the liberal arts and humanities and in scientific branches, but not in the technical arts or those studies preparatory to admission to the professions. Corn. v. Banks, 198 Pa. 397, 48 A. 277; Chegaray v. New York, 13 N.Y. 229. Also applied to all kinds of institutions from universities, or departments thereof to "business colleges," "barber colleges," etc. State v. Erickson, 75 Mont. 429, 244 P. 287, 291.

In England, it is a civil corporation, company or society of men, having certain privileges, and endowed with certain revenues, founded by royal license. An assemblage of several of these colleges is called a "university." Wharton.

COLLEGIA. In the civil law. The guild of a trade.

COLLEGIALITER. In *a* corporate capacity. 2 Kent, Comm. 296.

COLLEGIATE CHURCH. In English ecclesiastical law. A church built and endowed for a society or body corporate of a dean or other president, and secular priests, as canons or prebendaries in the said church; such as the churches of Westminster, Windsor, and others. Cowell.

COLLEGIUM. Lat. In the civil law. A word having various meanings ; *e. g.,* an assembly, society, or company; a body of bishops; an army; a class of men. But the principal idea of the word was that of an association of individuals of the same rank and station, or united for the pursuit of some business or enterprise. Sometimes, a corporation, as in the maxim "tres faciunt collegium" (1 Bl.Comm. 469), though the more usual and proper designation of a corporation was "universitas."

COLLEGIUM AMMIRALITATIS. The college or society of the admiralty.

COLLEGIUM EST SOCIETAS PLURIUM CORPORUM SIMUL HABITANTIUM. Jenk.Cent. 229. A college is a society of several persons dwelling together.

COLLEGIUM ILLICITUM. One which abused its right, or assembled for any other purpose than that expressed in its charter.

COLLEGIUM LICITUM. An assemblage or society of men united for some useful purpose or business, with power to act like a single individual. 2 Kent, Comm. 269.

COLLIDE. To strike or dash against; to come into collision; to clash. Collins v. Leahy, Mo. App., 102 S.W.2d 801, 809.

COLLIERY. This term is sufficiently wide to include all contiguous and connected veins and seams of coal which are worked as one concern, without regard to the closes or pieces of ground under which they are carried, and apparently also the engines and machinery in such contiguous and connected veins. MacSwin. Mines, 25. Carey v. Bright, 58 Pa. 85.

It includes every operation and work, both under and above ground, used or to be used to mine and prepare coal. Moore v. Stevens Coal Co., 315 Pa. 564, 173 A. 661, 662.

COLLIGENDUM BONA DEFUNCTI. See Ad Colligendum, etc.

COLLISION. Striking together of two objects, -one of which may be stationary. Davilla v. Liberty Life Ins. Co., 114 Cal.App. 308, 299 P. 831, 834. Act or instance of colliding; state of having collided. Guenther v. American Indem. Co., 246 Wis. 478, 17 N.W.2d 570, 571.

Maritime Law

The act of ships or vessels striking together.

*In its* strict sense, collision means the impact of two vessels both moving, and is distinguished from *allision,* which designates the striking of a moving vessel against one that is stationary. But collision is used in a broad sense, to include allision, and perhaps other species of encounters between vessels, or a vessel and other floating, though non-navigable, objects. Wright v. Brown, 4 Ind. 97, 58 Am.Dec. 622; London Assur. Co. v. Companhia De Moagens, 68 F. 258, 15 C.C.A. 379; Lehigh & Wilkes-Barre Coal Co. v. Globe & Rutgers Fire Ins. Co., C.C.A.N.Y., 6 F.2d 736, 738, 43 A.L.R. 215.

The term is not inapplicable to cases where a stationary vessel is struck by one under way, strictly termed "allision" ; or where one vessel is brought into contact with another by swinging at anchor. And even an injury received by a vessel at her moorings, in consequence of being violently rubbed or pressed against by a second vessel lying alongside of her, in consequence of a collision against such second vessel by a third one under way, may be compensated for, under the general head of "collision," as well as an injury which is the direct result of a "blow," properly so called. The Money, Abb.Adm. 73, Fed.Cas.No. 9,894.

Automobile Insurance Law

The term denotes the act of colliding; striking together; violent contact. Long v. Royal ins. Co., 180 Wash. 360, 40 P.2d 132, 133, 105 A.L.R. 1423. The term implies an impact or sudden contact of a moving body with an obstruction in its line of motion, whether both bodies are in motion or one stationary and the other, no matter which, in motion. St. Paul Fire & Marine Ins. Co. v. American Compounding Co., 211 Ala. 593, 100 So. 904, 906, 35 A.L.R. 1018; Rea v. Motors Ins. Corporation, 48 N.M. 9, 144 P.2d 676, 678, 679, 681.

But liability depends on what the automobile collides with and, of course, the cause of the collision and the terms of the policy. Liability has been sustained where collision was with embankment, Pred v. Employers' Indemnity Corporation, 112 Neb. 161, 198 N.W. 864, 866, 35 A.L.R. 1003; and also denied, Fox *v.* Interstate Exch., 182 Wis. 28, 195 N.W. 842. Liability has also been denied where collision was with earth, after automobile had gone over an embankment, Continental Casualty Co. v. Paul. 209 Ala. 166, 95 So. 814, 815, 30 A.L.R. 802 *(contra* Polstein v. Pacific Fire Ins. Co., 203 N.Y.S. 362, 122 Misc. 194) ; and with stump after skidding off the road, Ploe v. International Indemnity Co., 128 Wash. 480, 223 P. 327, 328, 35 A.L.R. 999. Liability has been sustained for damages caused by collision with sides of rut, Wood v. Southern Casualty Co., Tex.Civ.App., 270 S.W. 1055, 1057; and both sustained and denied where body or frame of automobile collided with the road through the breaking of an axle or other cause, Young v. New Jersey Ins. Co., D.C.Mont., 284 F. 492, 493 ; Great American Mut. Indemnity Co. v. Jones. 111 Ohio St. 84, 144 N.E. 596, 35 A.L.R. 1023; Great Eastern Casualty Co. v. Solinsky, 150 Tenn. 206, 263 S.W. 71, 74, 35 A.L.R. 1007. Liability has been sustained where elevator containing automobile fell, Freiberger v. Globe Indemnity Co., 199 N.Y.S. 310, 311, 205 App.Div. 116; National Fire Ins. 'Co. of Hartford, Conn., v. Elliott, C.C.A. Mo., 7 F.2d 522, 527, 42 A.L.R. 1121 ; where standing car ran over precipice, St. Paul Fire & Marine Ins. Co. v. American Compounding Co., 211 Ala. 593, 100 So. 904, 906, 35 A.L.R. 1018; where scoop of steamshovel loading autotruck fell on latter, Universal Service Co. *v.* American Ins. Co., 213 Mich. 523, 181 N.W. 1007, 14 A.L.R. 183; but denied where second floor of garage fell upon automobile, O'Leary v. St. Paul Fire & Marine Ins. Co., Tex.Civ.App., 196 S.W. 575. This subject is fully discussed in Blashfield, Cyc. of Automobile Law and Prac., Perm.Ed., §§ 3691-3698.

COLLISION CLAUSE. An additional provision for insurance, on the margin of the policy, covering the contingency of a collision of the insured vessel with another vessel and the liability of the insured for the injury to such other vessel. Fireman's Fund Ins. Co. v. Globe Na[y]. Co., C.C.A. Wash., 236 F. 618, 631. Also known *as* "running down" clause.

COLLISTRIGIUM. The pillory.

COLLOBIUM. A hood or covering for the shoulders, formerly worn by serjeants at law.

COLLOCATION. In French law. The arrangement or marshaling of the creditors of an estate in the order in which they are to be paid according to law. Merl. Repert.

COLLOQUIUM. One of the usual parts of the declaration in an action for slander. It is a general averment that the words complained of were spoken "of and concerning the plaintiff," or concerning the extrinsic matters alleged in the inducement, and its office is to connect the whole publication with the previous statement. Van Vechten v. Hopkins, 5 Johns., N.Y., 220, 4 Am.Dec. 339; Lukehart v. Byerly, 53 Pa. 421; Express Pub. Co. v. Wilkins, Tex.Civ.App., 218 S.W. 614, 616; Kee v. Armstrong, Byrd & Co., 75 Okl. 84, 182 P. 494, 498, 5 A.L.R. 1349.

An averment that the *words* in question are spoken of or concerning some usage, report, or fact which gives to words otherwise indifferent the peculiar defamatory meaning assigned to them. Carter v. Andrews, 16 Pick., Mass., 6; Moore v. Leverett, Tex.Civ.App., 33 S.W.2d 838, 842.

COLLUSION. Is an agreement between two or more persons to defraud a person of his rights by the forms of law, or to obtain an object forbidden by law. It implies the existence of fraud of some kind, the employment of fraudulent means, or of lawful means for the accomplishment of an unlawful purpose. May Hosiery Mills v. United States District Court in and for Dist. of Montana, C.C.A. Mont., 64 F.2d 450, 454.

A secret combination, conspiracy, or concert of action between two or more persons for fraudulent or deceitful purpose. W. E. Bowen Improvement Co. v. Van Half ten, 209 Mo.App. 629, 238 S.W. 147, 149; Daly v. Haight, 156 N.Y.S. 538, 541, 170 App.Div. 469.

A secret arrangement between two or more persons, whose interests are apparently conflicting, to make use of the forms and proceedings of law in order to defraud a third person, or to obtain that which justice would not give them, by deceiving a court or its officers. Railroad Co. v. Gay, 86 Tex. 571, 26 S. W. 599, 25 L.R.A. 52 ; Balch v. Beach, 119 Wis. 77, 95 N.W. 132. A secret agreement between two persons that one should institute a suit against the other, in order to obtain the decision of a judicial tribunal for some sinister purpose. In re Insull Utility Investments, D.C.I11., 6 F.Supp. 653, 655.

In divorce proceedings, collusion is an agreement between husband and wife that one of them shall commit, or appear to have committed, or be represented in court as having committed, acts constituting a cause of divorce, for the purpose of enabling the other to obtain a divorce. But it also means connivance or conspiracy in initiating or prosecuting the suit, as where there is a compact for mutual aid in carrying it through to a decree. Beard v. Beard, 65 Cal. 354, 4 P. 229; Pohlman v. Pohlman, 60 N.J.Eq. 28, 46 A. 658; McCauley v. McCauley, 88 N.J.Eq. 392, 103 A. 20, 23. Rosenzweig v. Rosenzweig, 246 N.Y.S. 231, 233, 231 App.Div. 13.

COLLUSIVE ACTION. An action not founded upon an actual controversy between the parties to it, but brought for purpose of securing a determination of a point of law for the gratification of curiosity or to settle rights of third persons not parties. It will not be entertained. City and County of San Francisco v. Boyd, 22 Ca1.2d 685, 140 P.2d 666, 669, 670.

COLLYBISTA. In the civil law. A money-changer; a dealer in money.

COLLYBUM. In the civil law. Exchange.

COLNE. In Saxon and old English law. An account or calculation.

COLONUS. In old European law. A husbandman; an inferior tenant employed in cultivating the lord's land. A term of Roman origin, corresponding with the Saxon ceorl. 1 Spence, Ch. 51.

COLONY. A dependent political community, consisting of a number of citizens of the same country who have emigrated therefrom to people another, and remain subject to the mother-country. U. S. v. The Nancy, 3 Wash.C.C. 287, Fed.Cas.No.15,854.

A settlement in a foreign country possessed and cultivated, either wholly or partially, by immigrants and their descendants, who have a political connection with and subordination to the mother-country, whence they emigrated. In other words, it is a place peopled from some more ancient city or country. Wharton.

Colonial Office

In the English government, this is the department of state through which the sovereign appoints colonial governors, etc., and communicates with them. Until the year 1854, the secretary for the colonies was also secretary for war.

Colonial Laws

In America, this term designates the body of law in force in the thirteen original colonies before the Declaration of Independence. In England, the term signifies the laws enacted by Canada and the other present British colonies.

COLOR. An appearance, semblance, or *simulacrum,* as distinguished from that which is real. A *prima facie* or apparent right. Hence, a deceptive appearance; a plausible, assumed exterior, concealing a lack of reality; a disguise or pretext. Railroad Co. v. Allfree, 64 Iowa 500, 20 N.W. 779; Broughton v. Haywood, 61 N.C. 383; Wilt v. Bueter, 186 Ind. 98, 111 N.E. 926, 929.

In pleading. Ground of action admitted to subsist in the opposite party by the pleading of one of the parties to an action, which is so set out as to be apparently valid, but which is in reality legally insufficient.

A term of the ancient rhetoricians, and early adopted into the language of pleading. It was an apparent or *prima facie* right; and the meaning of the rule that pleadings in confession and avoidance should *give* color was that they should confess the matter adversely alleged, to such an extent, at least, as to admit some apparent right in the opposite party, which required to be encountered and avoided by the allegation of new matter. Color was either express, *i. e.,* inserted in the pleading, or implied, which was naturally inherent in the structure of the pleading. Steph.P1. 233; Merten v. Bank, 5 Okl. 585, 49 P. 913. Wheeler v. Nickels, 168 Or. 604, 126 P.2d 32, 36.

The word also means the dark color of the skin showing the presence of negro blood; and hence it is equivalent to African descent or parentage. Johnson v. Board of Education of Wilson County, 166 N.C. 468, 82 S.E. 832, 834, L.R.A.1915A, 828.

COLOR OF AUTHORITY. That semblance or presumption of authority sustaining the acts of a public officer which is derived from his apparent title to the office or from a writ or other process in his hands apparently valid and regular. State v. Oates, 86 Wis. 634, 57 N.W. 296, 39 Am.St.Rep. 912.

COLOR OF LAW. The appearance or semblance, without the substance, of legal right. State v. Brechler, 185 Wis. 599, 202 N.W. 144, 148.

COLOR OF OFFICE. An act unjustly done by the countenance of an office, being grounded upon corruption, to which the office is as a shadow and color. Plow. 64. Day v. National Bond & Investment Co., Mo.App., 99 S.W.2d 117, 119.

A claim or assumption of right to do an act by virtue of an office, made by a person who is legally destitute of any such right. Feller v. Gates, 40 Or. 543, 67 P. 416, 56 L.R.A. 630, 91 Am.St.Rep. 492; Citizens' Bank of Colquitt v. American Surety Co. of New York, 174 Ga. 852, 164 S.E. 817; Pontiac Trust Co. v. Newell, 266 Mich. 490, 254 N.W. 178, 181.

Such person must be at least officer *de factor*. Burrall v. Acker, 23 Wend., N.Y., 606, 35 Am.Dec. 582; Day v. National Bond & Investment Co., Mo.App., 99 S.W.2d 117, 119. See, also, Colore Officii.

COLOR OF TITLE. The appearance, semblance, or *simulacrum* of title. Also termed "apparent title." Any fact, extraneous to the act or mere will of the claimant, which has the appearance, on its face, of supporting his claim of a present title to land, but which, for some defect, in reality falls short of establishing it. Howth v. Farrar, C.C.A. Tex., 94 F.2d 654, 658; Saltmarsh v. Crommelin, 24 Ala. 352.

, Anything in writing purporting to convey title to the *land,* which defines the extent of the claim, it being immaterial how defective or imperfect the writing may be, so that it is a sign, semblance, or color of title. Theisen v. Qualley, 42 S.D. 367, 175 N.W. 556, 557. A title that is imperfect, but not so obviously so that it would be apparent to one not skilled in the law. Ipock v. Gaskins, 161 N.C. 673, 77 S.E. 843, 847.

A writing upon its face professing to pass title but which does not, either through want of title in the grantor or a defective mode of conveyance. Philbin v. Carr, 75 Ind.App. 560, 129 N.E. 19, 24; Glass v. Lynchburg Shoe Co., 212 N.C. 70, 192 S.E. 899.

That which the law considers *prima facie* a good title, but which, by reason of some defect, not appearing on its face, does not in fact amount to title. An absolute nullity, as a void deed, judgment, etc., will not constitute color of title. Causey v. White, 143 Ga. 7, 84 S.E. 58; Stearns Coal & Lumber Co. v. Boyatt, 168 Ky. 111, 181 S. W. 962, 964. That which is title in appearance but not in reality. Ffts-chen Bros. Commercial Co. v. Noyes' Estate, 76 Mont. 175, 246 P. 773, 779; Boland v. Heck, 179 Okl. 403, 65 P.2d 1213, 1215.

"Any instrument having a grantor and grantee, and containing a description of the lands intended to be conveyed, and apt words for their conveyance, gives color of title to the lands described. Such an instrument purports to be a conveyance of the title, and because it does not, for some reason, have that effect, it passes only color or the semblance of a title." Brooks v. Bruyn, 35 Ill. 392.

"Color of title" is not synonymous with "claim of title." To constitute "color of title" there must be a paper title to give color to the adverse possession, whereas, a "claim of title" may be shown wholly by parol. Walton v. Sikes, 165 Ga. 422, 141 S.E. 188, 190.

COLORABLE. That which has or gives color. That which is in appearance only, and not in reality, what it purports to be. Counterfeit, feigned, having the appearance of truth. Ellis v. Jones, 73 Colo. 516, 216 P. 257, 258.

COLORABLE ALTERATION. One which makes no real or substantial change, but is introduced only as a subterfuge or means of evading the patent or copyright law.

COLORABLE CAUSE OR INVOCATION OF JURISDICTION. With reference to actions for malicious prosecution, a "colorable cause or invocation of jurisdiction" means that a person, apparently qualified, has appeared before a justice and made a complaint under oath and in writing, stating some facts which in connection with other facts constitute a criminal offense or bear a similitude thereto. Hotel Supply Co. v. Reid, 16 Ala. App. 563, 80 So. 137, 138.

COLORABLE CLAIM. In bankruptcy law, a claim made by one holding the property as an agent or bailee of the bankrupt; a claim in which as a matter of law, there Is no adverseness. In re if tim, C.C.A.Wis., 202 F. 883, 884; In re Western Rope & Mfg. Co., C.C.A.Okl., 298 F. 926, 927.

COLORABLE IMITATION. In the law of trademarks, this phrase denotes such a close or ingenious imitation as to be calculated to deceive ordinary persons.

COLORABLE PLEADING. The practice of giving *color* in pleading.

COLORABLE TRANSACTION. One presenting an appearance which does not correspond with the reality, and, ordinarily, an appearance intended to conceal or to deceive. Osborn v. Osborn, 102 Kan. 890, 172 P. 23, 24.

COLORE OFFICII. Lat. By color of office. Officer's acts unauthorized by officer's position, though done in form that purports that acts are done by reason of official duty and by virtue of office. Richards v. American Surety Co. of New York, 48 Ga.App. 102, 171 S.E. 924. See, also, Color of Office.

COLORED. By common usage in America, this term, in such phrases as "colored persons," "the colored race," "colored men," and the like, is used to designate negroes or persons of the African race, including all persons of mixed blood descended from negro ancestry. Collins v. Oklahoma State Hospital, 76 Okl. 229, 184 P. 946, 949, 7 A.L.R. 895; Theophanis v. Theophanis, 244 Ky. 689, 51 S.W.2d 957.

But where a state Constitution provided for separate schools for the white and colored races, the term "white race" was held to be limited to the Caucasian race, and the term "colored races" to embrace all other races. Rice v. Gong Lum, 139 Miss. 760, 104 So. 105, 107.

It has also been held that there is no legal technical signification to the phrase "colored person" which the courts are bound judicially to know. Pauska v. Daus, 31 Tex. 74.

COLPICES. Young poles, which, being cut down, are made levers or lifters. Blount.

COLPINDACII. In old Scotch law. A young beast or cow, of the age of one or two years; in later times called a "cowdasfi."

COLT. An animal of the horse species, whether male or female, not more than four years old. Russ. & R. 416; Mallory v. Berry, 16 Kan. 295; Pullen v. State, 11 Tex.App. 91.

COM. An abbreviation for "company," exactly equivalent to "Co." Keith v. Sturges, 51 Ill. 142.

COMBARONES. In old English law. Fellow-barons; fellow-citizens ;—the citizens or freemen of the Cinque Ports being anciently called "barons;" the term *"combarones"* is used in this sense in a grant of Henry III. to the barons of the port of Fevresham. Cowell.

COMBAT. A forcible encounter between two or more persons; a battle; a duel. Trial by battle.

Mutual Combat

One into which both the parties enter willingly or voluntarily; it implies a common intent to

fight, but not necessarily an exchange of blows. Aldridge v. State, 59 Miss. 250; Tate v. State, 46 Ga. 158; State v. Moss, 24 N.M. 59, 172 P. 199; Findley v. State, 125 Ga. 583, 54 S.E. 106.

COMBATERRIE. A valley or piece of low ground between two hills. Kennett, Gloss.

COMBE. A small or narrow valley.

COMBINATION. A conspiracy, or confederation of men for unlawful or violent deeds. See Deupree v. Thornton, 97 Neb. 812, 151 N.W. 305, 307, L.R.A.1917C, 65.

In patent law. A union of different elements. A patent may be taken out for a new combination of existing machines. Stevenson Co. v. McFassell, C.C.A.Pa., 90 F. 707, 33 C.C.A. 249; Moore v. Schaw, C.C.Cal., 118 F. 602; Moody v. Fiske, 2 Mas. 112, Fed.Cas.No.9,745.

In patent law. A composition of old or new elements, and it is patentable, if it produces new and useful results, though all its constituents were well known and in common use before it was made, provided the results are a product of the combination, and not a mere aggregate of several results. U. S. Industrial Chemical Co. v. Theroz Co., C.C.A.Md., 25 F.2d 387, 391.

The distinction between a "combination" and an "aggregation" lies in the presence or absence of mutuality of action; a "combination" essentially requiring that there be some joint operation performed by its elements, producing a result due to their joint and cooperating action, while in an "aggregation" there is a mere adding together of separate contributions, each operating independently of the other. Ball v. Coker, C.C.A.S.C., 210 F. 278, 282; Mead Morrision Mfg. Co. v. Exeter Mach. Works, D.C.Pa., 215 F. 731.

COMBINATION IN RESTRAINT OF TRADE. A trust, pool, or other association of two' or more individuals or corporations having for its object to monopolize the manufacture or traffic in a particular commodity, to regulate or control the output, restrict the sale, establish and maintain the price, stifle or exclude competition, or otherwise to interfere with the normal course of trade under conditions of free competition. Northern Securities Co. v. U. S., 193 U.S. 197, 24 S.Ct. 436, 48 L.Ed. 679; U. S. v. Knight Co., 156 U.S. 1, 15 S.Ct. 249, 39 L.Ed. 325.

COMBINED CARBON. As used in the metallurgy of iron and steel, carbon in union with some one or more metallic constituents in the iron alloy. Pittsburgh Iron & Steel Foundries Co. v. Seaman-Sleeth Co., C.C.A.Pa., 248 F. 705, 707.

COMBING WOOL. A long-stapled wool, usually combed, employed in the manufacture of worsteds. Stone & Downer Co. v. U. S., 12 Ct.Cust.App. 62, 63; U. S. v. Stone & Downer Co., 12 Ct.Cust.App. 557. See Clothing Wool.

COMBUSTIBLE. Capable of undergoing combustion; apt to catch fire; inflammable. Hebrlee v. Hawley, 112 Kan. 398, 211 P. 129, 131.

COMBUSTIO. Burning. In old English law. The punishment inflicted upon apostates.

COMBUSTIO DOMORUM. Houseburning; arson. 4 Bl.Comm. 272.

COMBUSTIO PECUNI2E. Burning of money; the ancient method of testing mixed and corrupt money, paid into the exchequer, by melting it down.

COME. To present oneself; to appear in court. In modern practice, though such presence may be constructive only, the word is still used to indicate participation in the proceedings. Horner v. O'Laughlin, 29 Md. 472. Melfi v. Barney, R.I., 121 A. 67, 68.

Thus, a pleading may begin, "Now comes the defendant," etc. In case of a default, the technical language of the record *is* that the party *"comes* not, but makes default."

COMES, v. A word used in a pleading to indicate the defendant's presence in court. See Come.

COMES, n. Lat. A follower, companion, or attendant; a count or earl.

COMES AND DEFENDS. This phrase, anciently used in the language of pleading, and still surviving in some jurisdictions, occurs at the commencement of a defendant's plea or demurrer; and of its two verbs the former signifies that *he* appears in court, the latter that he defends the action.

COMFORT. Benefit, consolation, contentment, ease, enjoyment, happiness, pleasure, or satisfaction. National Surety Co. v. Jarrett, 95 W.Va. 420, 121 S.E. 291.

COMFORTABLE SPEED. As applied to railway trains, is a speed which has been developed by experience and observation to mean that speed at which you can run a train around a curve, and the passengers will not feel any uncomfortable or unpleasant lurch in going around the curve. Chesapeake & 0. Ry. Co. v. Tanner, 165 Va. 406, 182 S.E. 239.

COMINUS. Lat. Immediately; hand-to-hand; in personal contact.

COMITAS. Lat. Courtesy; civility; comity. An indulgence or favor granted another nation, as a mere matter of indulgence, without any claim of right made. *Comitas inter communitates;* or *comitas inter gentes;* comity between communities or nations; comity of nations. 2 Kent, Comm. 457.

COMITATU COMMISSO. A writ or commission, whereby a sheriff is authorized to enter upon the charges of a county. Reg.Orig. 295.

COMITATU ET CASTRO COMMISSO. A writ by which the charge of a county, together with the keeping of a castle, is committed to the sheriff.

COMITATUS. In old English law. A county or shire; the body of a county. The territorial jurisdiction of a *comes, i. e.,* count or earl. 1 Bla. Comm. 116. An earldom. 1 Ld.Raym. 13. The county court, a court of great antiquity and of great dignity in early times. 1 Spence, Eq.Jur. 42,

66. Also, the retinue or train of a prince or high governmental official. Spelman. The retinue which accompanied a Roman proconsul to his province. Du Cange. The personal following of professional warriors. Taylor, Jurispr. 216.

COMITES. Counts or earls. Attendants or followers. Persons composing the retinue of a high functionary.

Persons who are attached to the suite of a public minister. As to their privileges, see Respublica v. De Longchamps, 1 Da11. (Pa.) 117, 1 L.Ed. 59; U. S. v. Benner, Baldw. 240, Fed.Cas.No.14,568.

COMITES PALEYS. Counts or earls palatine; those who had the government of a county palatine.

COMITIA. In Roman law. An assembly, either (1) of the Roman curiae, in which case it was called the *"comitia curiata vel calata";* or (2) of the Roman centuries, in which case it was called the *"comitia centuriata"* (called also *comitia majora) ;* or (3) of the Roman tribes, in which case it was called the *"comitia tributa."* Only patricians were members of the first *comitia,* and only plebians of the last; but the *comitia centuriata* comprised the entire populace, patricians and plebians both, and was the great legislative assembly passing the *leges,* properly so called, as the senate passed the *senatus consulta,* and the *comitia tributa* passed the *plebiscita.* Under the *Lex Hortensia,* 287 B.C., the *plebiscitum* acquired the force of a *lex.* Brown.

COMITISSA. In old English law. A countess; an earl's wife.

COMITIVA. In old English law. The dignity and office of a *comes* (count or earl) ; the same with what was afterwards called *"comitatus."*

Also a companion or fellow-traveler; a troop or company of robbers. Jacob.

COMITY. Courtesy; complaisance; respect; a willingness to grant a privilege, not as a matter of right, but out of deference and good will. Dow v. Lillie, 26 N.D. 512, 144 N.W. 1082, 1088, L.R.A. 1915D, 754; Cox v. Terminal R. Ass'n of St. Louis, 331 Mo. 910, 55 S.W.2d 685.

### Comity of Nations

(Lat. *comitas gentium)*

The most appropriate phrase to express the true foundation and extent of the obligation of the laws of one nation within the territories of another. Story, Confl.Laws, § 38. That body of rules which states observe towards one another from courtesy or mutual convenience, although they do not form part of international law. Holtz. Enc. s. v. Hilton v. Guyot, 159 U.S. 113, 16 S.Ct. 139, 40 L.Ed. 95; People v. Rushworth, 294 Ill. 455, 128 N.E. 555, 558; Second Russian Ins. Co. v. Miller, C.C.A.N.Y., 297 F. 404, 409.

It is derived altogether from the voluntary consent of the latter; and it is inadmissible when it is contrary to its known policy, or prejudicial to its interests. In the silence of any positive rule affirming or denying or restraining the operation of foreign laws, courts of justice presume the tacit adoption of them by their own government, unless repugnant to its policy, or prejudicial to its interests. It ,is not the comity of the courts, but the comity of the nation, which is administered and ascertained in the same way, and guided by the same reasoning, by which all other principles of the municipal law are ascertained and guided.

The recognition which one nation allows within its territory to the legislative, executive, or judicial acts of another nation, having due regard both to international duty and convenience and to the rights of its own citizens or of other persons who are under the protection of *its* laws. State ex rel. National Surety Corporation v. Price, 129 Neb. 433, 261 N.W. 894.

"The use of the word 'comity' *as* expressing the basis of jurisdiction has been criticized. It is, however, a mere question of definition. The principles lying behind the word are recognized. * * * The truth remains that jurisdiction depends upon the law of the forum, and this law in turn depends upon the public policy disclosed by the acts and declarations of the political departments of the government." Russian Socialist Federated Soviet Republic v. Cibrario, 235 N.Y. 255, 139 N.E. 259, 260.

### Judicial Comity

The principle in accordance with which the courts of one state or jurisdiction will give effect to the laws and judicial decisions of another, not as a matter of obligation, but out of deference and respect. Franzen v. Zimmer, 35 N.Y.S. 612, 90 Hun 103; Stowp v. Bank, C.C.Me., 92 F. 96; Strawn Mercantile Co. v. First Nat. Bank, Tex. Civ.App., 279 S.W. 473, 474; Bobala v. Bobala, 68 Ohio App. 63, 33 N.E.2d 845, 849.

There is no statute or common-law rule by which one court is bound to abide by the decisions of another court of equal rank. It does so simply for what may be called comity among judges. There is no common law or statutory rule to oblige a court to bow to its own decisions; it does so on the ground of judicial comity. (1884) 9 P.D. 98, per Brett, M. R.

Of such a use of the word, however, Dicey says : "The term 'comity' * * * is open to the charge of implying that the judge, when he applies foreign law to a particular case, does so as a matter of caprice or favor."

Comity is not a rule of law, but one of practice, convenience and expediency. It is something more than mere courtesy, which implies only deference to the opinion of others, since it has a substantial value in securing uniformity of decision, and discouraging repeated litigation of the same question. But its obligation is not imperative. Comity persuades; but it does not command. It declares not how a case shall be decided, but how it may with propriety be decided. Mast, Foos & Co. v. Mfg. Co., 177 U.S. 485, 488, 20 S.Ct. 708, 44 L.Ed. 856; National Electric Signaling Co. v. Telefunken Wireless Telegraph Co. of United States, C.C.A.N.Y., 221 F. 629, 632; Lauer V. Freudenthal, 96 Wash. 394, 165 P. 98, 99.

### Comity of States

Simply a phrase designating the practice by which the courts of one state follow the decision of another on a like question, though not bound by law of precedents to do so. Larrick v. Walters, 39 Ohio App. 363, 177 N.E. 642, 645.

COMMA. A point used to mark the smallest structural divisions of a sentence, or a rhetorical punctuation mark indicating the slightest possible separation in ideas or construction. Travelers' Ins. Co. v. Pomerantz, 124 Misc. 250, 207 N.Y.S. 81, 86.

COMMAND. An order, imperative direction, or behest. State v. Mann, 2 N.C. 4; Barney v. Hayes,

11 Mont. 571, 29 P. 282, 28 Am.St.Rep. 495. As applied to a fortress, "command" means actual control of the garrison for military purposes. As applied to a ship, it means actual control of the crew for nautical purposes. Hamilton v. U. S., C. C.A.Va., 268 F. 15, 19.

The term "instance," as used with reference to doing an act at one's instance, does not imply the same degree of obligation to obey as does "command." Feore v. Trammel, 104 So. 808, 813, 213 Ala. 293.

COMMANDEMENT. In French law. A writ served by the *huissier* pursuant to a judgment or to an executory notarial deed. Its object is to give notice to the debtor that if he does not pay the sum to which he has been condemned by the judgment, or which he engaged to pay by the notarial deed, his property will be seized and sold. Arg.Fr.Merc.Law, 550.

COMMANDER IN CHIEF. By article 2, § 2, of the constitution it is declared that the president shall be commander in chief of the army and navy of the United States. The term implies supreme control of military operations during the progress of a war, not only on the side of strategy tactics, but also in reference to the political and international aspects of the war. See Fleming v. Page, 9 How. 603, 13 L.Ed. 276; Prize Cases, 2 Black, 635, 17 L.Ed. 459; Swaim v. U. S., 28 Ct. Cl. 173.

COMMANDERY. In old English law. A manor or chief messuage with lands and tenements thereto appertaining, which belonged to the priory of St. John of Jerusalem, in England; he who had the government of such a manor or house was styled the "commander," who could not dispose of it, but to the use of the priory, only taking thence his own sustenance, according to his degree. The manors and lands belonging to the priory of St. John of Jerusalem were given to Henry the Eighth by 32 Hen. VIII. c. 20, about the time of the dissolution of abbeys and monasteries; so that the name only of commanderies remains, the power being long since extinct. Wharton.

COMMANDITAIRES. Special partners; partners *en commanditë.* See Commandite.

COMMANDITE. In French law. A partnership in which some furnish money, and others furnish their skill and labor in place of capital.

A special or limited partnership, where the contract is between one or more persons who are general partners, and jointly and severally responsible, and one or more other persons who merely furnish a particular fund or capital stock, and thence are called *"commanditaires,"* or *"commenditaires,"* or "partners *en commanditë,"* the business being carried on under the social name or firm of the general partners only, composed of the names of the general or complementary partners, the partners in *commanditë* being liable to losses only to the extent of the funds or capital furnished by them. Story, Partn. § 78; 3 Kent, Comm. 34. The term includes a partnership containing dormant rather than special partners. Story, Partn. § 109.

COMMANDMENT.

An authoritative order of a judge or magisterial officer.

In criminal law. The act or offense of one who commands another to transgress the law, or do anything contrary to law, as theft, murder, or the like. Particularly applied to the act of an accessary before the fact, in inciting, procuring, setting on, or stirring up another to do the fact or act. 2 Inst. 182.

COMMARCHIO. A boundary; the confines of land.

COMMENCE. To perform the first act of. Robinson v. Gordon Oil Co., 258 Mich. 643, 242 N.W. 795, 796. To institute. State v. Murphy, 120 Kan. 350, 243 P. 288, 289. To demand something by the institution of process in a court of justice. Ledonne v. Commerce Ins. Co. of Glen Falls, N.Y., 307 Pa. 1, 160 A. 612.

*To commence an action or suit* is to demand something by the institution of process in a court of justice. Cohens v. Virginia, 6 Wheat. 408, 5 L.Ed. 257.

To "bring" a suit is an equivalent term; an action Is "commenced" when it is "brought," and vice versa. Goldenberg v. Murphy, 108 U.S. 162, 2 S. Ct. 388, 27 L.Ed. 686 ; Hannaman v. Gordon, Tex.Com.App., 261 S.W. 1006, 1007.

An action is "commenced" within the meaning of the statute of limitations as soon as the summons is signed and sealed in good faith, for the purpose of immediate service, and that purpose is not afterwards abandoned. Wilson v. Clear, 85 N.J.L. 474, 89 A. 1031. Compare Glenn v. Payne, 153 Tenn. 240, 280 S. W. 1019, 1021. Owen v. City of Eastland, 124 Tex. 419, 78 S.W.2d 178, 179.

A suit in a court of record is "commenced", so as to save suit from bar of statute of limitations, when the petition is filed, even though process is not issued until the period of limitation has run, since plaintiff has done all he can toward commencement of the suit. Mo.St.Ann. § 724, p. 940. City of St. Louis v. Miller, 235 Mo.App. 987, 145 S.W.2d 504, 505.

A suit in equity is not commenced until the issuance of a subpoena followed by a bona fide effort to serve it. U. S. v. Scheurman, D.C.Idaho, 218 F. 915, 919.

*To commence drilling operations* within the meaning of an oil and gas lease has reference to the first movement of the drill in penetrating the ground. Solberg v. Sunburst Oil & Gas Co., 73 Mont. 94, 235 P. 761, 763. But see Terry v. Texas Co., Tex.Civ.App., 228 S.W. 1019, holding that a lessee, by placing timbers for the erection of a derrick, together with machinery, including a boiler, on the ground where an oil well was to be drilled, complied with a provision requiring him to "commence to drill." But compare Lauderdale Power Co. v. Perry, 202 Ala. 394, 80 So. 476, 480.

*Criminal prosecution* is "commenced" within statute of limitations when complaint is filed with magistrate in good faith and warrant issued. Hicks v. State, 54 Okl.Cr. 431, 23 P.2d 219.

*Commencement of building* or improvement, within the meaning of Lien Law, is the visible commencement of actual operations on the ground for the erection of the building, which every one can readily recognize as commencement of a building, and which is done with intention to continue the work until building is completed. Security Stove & Mfg. Co. v. Sellards, 133 Kan. 747, 3 P.2d 481, 482, 76 A.L.R. 1397.

COMMENCEMENT OF A DECLARATION. That part of the declaration which follows the venue and precedes the circumstantial statement of the cause of action.

It formerly contained a statement of the names of the parties, and the character in which they sue or are sued, if any other than their natural capacity; of the mode in which the defendant had been brought into court, and a brief statement of the form of action. In modern practice, however, in most cases, it contains little else then the names and character of the parties.

COMMENDA. In French law. The delivery of a benefice to one who cannot hold the legal title, to keep and manage it for a time limited and render an account of the proceeds. Guyot, Rep.Univ.

In Mercantile Law. An association in which the management of the property was intrusted to individuals. Troub.Lim.Partn. c. 3, § 27.

COMMENDA EST FACULTAS RECIPIENDI ET RETINENDI BENEFICIUM CONTRA JUS POSITIVUM A SUPREMA POTESTATE. Moore, 905. A commendam is the power of receiving and retaining a benefice contrary to positive law, by supreme authority.

COMMENDAM. In ecclesiastical law. The appointment of a suitable clerk to hold a void or vacant benefice or church living until a regular pastor be appointed. Hob. 144; Latch, 236.

In Commercial Law. A species of limited partnership. The limited partnership (or *Societe en commanditó)* of the French law has been introduced into the Code of Louisiana under the title of "Partnership *in Commendam."* Civil Code La. art. 2810 (Civ.Code, art. 2839). See Mitchell, in 3 Sel.Essays, Anglo-Amer.L.H. 183; Commandite; Societe.

COMMENDATIO. In the civil law. Commendation, praise, or recommendation, as in the maxim "simplex commendatio non obligat," meaning that mere recommendation or praise of an article by the seller of it does not amount to a warranty of its qualities. 2 Kent, Comm. 485.

COMMENDATION. In feudal law. The act by which an owner of alodial land placed himself and his land under the protection of a lord, so as to constitute himself his vassal or feudal tenant.

COMMENDATORS. Secular persons upon whom ecclesiastical benefices were bestowed, as in Scotland; called so because the benefices were commended and intrusted to their supervision. They are merely trustees.

COMMENDATORY. He who holds a church living or preferment *in commendam.*

COMMENDATORY LETTERS. In ecclesiastical law. Such as are written by one bishop to another on behalf of any of the clergy, or others of his diocese traveling thither, that they may be received among the faithful, or that the clerk may be promoted, or necessaries administered to others, etc. Wharton.

COMMENDATUS. In feudal law. One who intrusts himself to the protection of another. Spelman. A person who, by voluntary homage, put himself under the protection of a superior lord. Cowell.

COMMENT. The expression of the judgment passed upon certain alleged facts by a person who has applied his mind to them, and who while so commenting assumes that such allegations of fact are true. The assertion of a fact is not a "comment." Horn v. State, 106 Tex.Cr.R. 190, 292 S. W. 227, 228.

COMMENT UPON THE EVIDENCE. Means that trial judge is prohibited from conveying to jury trial judge's personal opinion as to the truth or falsity of any evidence, but prohibition does not prohibit judges from giving counsel reasons for rulings on questions presented during progress of trial, or prohibit them in all cases from stating, when necessary, the facts upon which they base their conclusions. State v. Brown, 19 Wash. 2d 195, 142 P.2d 257, 259, 260.

COMMERCE. The exchange of goods, productions, or property of any kind. Jeu Jo Wan v. Nagle, C.C.A.Cal., 9 F.2d 309, 310.

Intercourse by way of trade and traffic between different peoples or states and the citizens or inhabitants thereof, including not only the purchase, sale, and exchange of commodities, but also the instrumentalities and agencies by which it is promoted and the means and appliances by which it is carried on, and the transportation of persons as well as of goods, both by land and by sea. Brennan v. Titusville, 14 S.Ct. 829, 153 U.S. 289, 38 L. Ed. 719; Railroad Co. v. Fuller, 17 Wall. 568, 21 L.Ed. 710; Hoke v. United States, 33 S.Ct. 281, 283, 227 U.S. 308, 57 L.Ed. 523, 43 L.R.A.,N.S., 906, Ann.Cas.1913E, 905. Also interchange of ideas, sentiments, etc., as between man and man. U. S. v. Eason Oil Co., D.C.Okl., 8 F.Supp. 365, 368.

Commerce, in its simplest signification, means an exchange of goods; but in the advancement of society, labor, transportation, intelligence, care and various mediums of exchange, become commodities and enter into commerce; the subject, the vehicle, the agent, and their various operations become the objects of commercial regulation. Lorenzetti v. American Trust Co., D.C.Cal., 45 F.Supp. 128, 132.

"Commerce" is not traffic alone, but is intercourse between nations and parts of nations in all its branches. Blumenstock Bros. Advertising Agency v. Curtis Pub. Co., 252 U.S. 436, 40 S.Ct. 385, 387, 64 L.Ed. 649.

The words "commerce" and "trade" are often used interchangeably; but, strictly speaking, commerce relates to intercourse or dealings with foreign nations, states, or political communities, while trade denotes business intercourse or mutual traffic within the limits of a state or nation, or the buying, selling, and exchanging of articles between members of the same community. Hooker v. Vandewater, 4 Denio, N.Y., 353, 47 Am. Dec. 258; Jacob; Wharton.

—Commerce among the states. Transportation from one state to another, and also all commercial intercourse between the different states, and all component parts of such intercourse. Dahnke-Walker Milling Co. v. Bondurant, 257 U.S. 282, 42 S.Ct. 106, 108, 66 L.Ed. 239.

—Commerce with foreign nations. Commerce between citizens of the United States and citizens or

subjects of foreign governments; commerce which, either immediately or at some stage of its progress, is extraterritorial. U. S. v. Holliday, 3 Wall. 409, 18 L.Ed. 182; Veazie v. Moor, 14 How. 573, 14 L.Ed. 545; Lord v. Steamship Co., 102 U.S. 544, 26 L.Ed. 224. The same as "foreign commerce," which see *infra.*

Power of Congress to regulate "commerce with foreign nations" comprehends every species of commercial intercourse. U.S.C.A.Const. art. 1, § 8, cl. 3. Board of Trustees of University of Illinois v. U. S., Cust. & Pat.App., 53 S.Ct. 509, 289 U.S. 48, 77 L.Ed. 1025.

—Commerce with Indian tribes. Commerce with individuals belonging to such tribes, in the nature of buying, selling, and exchanging commodities, without reference to the locality where carried on, though it be within the limits of a state. U. S. v. Holliday, 3 Wall. 407, 18 L.Ed. 182; U. S. v. Cisna, 25 Fed.Cas. 424.

—Domestic commerce. Commerce carried on wholly within the limits of the United States, as distinguished from foreign commerce. Also, commerce carried on within the limits of a single state, as distinguished from interstate commerce. Louisville & N. R. Co. v. Tennessee R. R. Com'n, C.C. Tenn., 19 Fed. 701.

—Foreign commerce. Commerce or trade between the United States and foreign countries. Com. v. Housatonic R. Co., 143 Mass. 264, 9 N.E. 547; Foster v. New Orleans, 94 U.S. 246, 24 L.Ed. 122. The term is sometimes applied to commerce between ports of two sister states not lying on the same coast, *e. g.,* New York and San Francisco.

—Internal commerce. Such as is carried on between individuals within the same state, or between different parts of the same state. Lehigh Val. R. Co. v. Pennsylvania, 145 U.S. 192, 12 S.Ct. 806, 36 L.Ed. 672; Steamboat Co. v. Livingston, 3 Cow. (N.Y.) 713. Now more commonly called "intrastate" commerce.

—International commerce. Commerce between states or nations entirely foreign to each other. Louisville & N. R. Co. v. Tennessee R. R. Com'n, C.C.Tenn., 19 F. 701.

—Interstate commerce. Such as is carried on between different states of the Union or between points lying in different states. See Interstate Commerce.

—Intrastate commerce. Such as is begun, carried on, and completed wholly within the limits of a single state. Contrasted with "interstate commerce" *(q. v.).* State v. Reed, 53 Mont. 292, 163 P. 477, 479, Ann.Cas.1917E, 783. And see Southern Pac. Co. v. State, 19 Ariz. 20, 165 P. 303, 306.

COMMERCIA BELLI. War contracts. Contracts between nations at war, or their subjects.

Agreements entered into by belligerents, either in time of peace to take effect in the event of war, or during the war itself, by which arrangement is made for non-hostile intercourse. They may take the form of armistices, truces, capitulations, cartels, passports, safe-conducts, safeguards. 1 Kent 159; 2 Opp. 274.

Contracts between citizens of one belligerent and those of another, or between citizens of one belligerent and the other belligerent. They may take the form of ransom bills *(q. v.),* bills of exchange drawn by prisoners of war, or receipts for requisitions. 1 Kent 104.

COMMERCIAL. Relating to or connected with trade and traffic or commerce in general. "Zante Currents", C.C.Cal., 73 F. 189. Occupied with commerce. Bowles v. Co-Operative G. L. F. Farm Products, D.C.N.Y., 53 F.Supp. 413, 415.

COMMERCIAL AGENCY. The same as a "mercantile" agency. In re United States Mercantile Reporting, etc., Co., 4 N.Y.S. 916, 52 Hun, 611. See Mercantile.

COMMERCIAL AGENT. An officer in the consular service of the United States, of rank inferior to a consul. Also used as equivalent to "commercial broker," see *infra.*

COMMERCIAL BROKER. One who negotiates the sale of merchandise without having the possession or control of it, being distinguished in the latter particular from a commission merchant. Adkins v. Richmond, 98 Va. 91, 34 S.E. 967, 47 L.R.A. 583, 81 Am.St.Rep. 705.

COMMERCIAL CORPORATION. One engaged in commerce in the broadest sense of that term; hence including a railroad company. Sweatt v. Railroad Co., 23 Fed.Cas. 530.

COMMERCIAL COURT. A name applied in English practice to the trial of commercial causes in London and Liverpool before judges of the High Court. It is said to be "a mere piece of convenience in the arrangement of business." [1895] 2 Ch. 491.

COMMERCIAL DOMICILE. See Domicile.

COMMERCIAL ESTABLISHMENT. A place where commodities are exchanged, bought or sold. State ex rel. Kansas City Power & Light Co. v. Smith, 342 Mo. 75, 111 S.W.2d 513, 515.

COMMERCIAL FRUSTRATION. Excuse of party from performance if contract depends on existence of given person or thing and such person or thing perishes, and if contract is rendered impossible by act of God, the law, or other party. Wood v. Bartolino, 48 N.M. 175, 146 P.2d 883, 885, 890.

In theory it amounts to no more than a condition or term of a contract which the law implies to take the place of a covenant that it is assumed would have been inserted by the parties had the contingency which arose occurred to them at the time they made the contract. Lloyd v. Murphy, Cal.App., 142 P.2d 939, 942, 943. And doctrine is predicated upon premise of giving relief in a situation where parties could not reasonably protect themselves by terms of a contract against happening of subsequent events. Berline v. Waldschmidt, 159 Kan. 585, 156 P.2d 865, 867. Hence doctrine has no application where events were reasonably foreseeable and controllable by the parties.

COMMERCIAL INSOLVENCY. Inability of a businessman to pay his debts as they become due in the regular and ordinary course of business. Willing v. Eveloff, C;C.A.Pa., 94 F.2d 344, 346.

COMMERCIAL INSURANCE, See Insurance.

COMMERCIAL LAW. A phrase used to designate the whole body of substantive jurisprudence applicable to the rights, intercourse, and relations of persons engaged in commerce, trade, or mercantile pursuits. It is not a very scientific or accurate term. As foreign commerce is carried on by means of shipping, the term has come to be used occasionally as synonymous with "maritime law;" but, in strictness, the phrase "commercial law" is wider, and includes many transactions or legal questions which have nothing to do with shipping or its incidents. Watson v. Tarpley, 18 How. 521, 15 L.Ed. 509; Williams v. Gold Hill Min. Co., C.C.Cal., 96 F. 464.

COMMERCIAL LETTER OF CREDIT. See Letter of Credit under the title Credit.

COMMERCIAL MARK. In French law. A trademark is specially or purely the mark of the manufacturer or producer of the article, while a "commercial" mark is that of the dealer or merchant who distributes the product to consumers or the trade. La Republique Francaise v. Schultz, C.C. N.Y., 57 F. 41.

COMMERCIAL PAPER. Bills of exchange, promissory notes, bank-checks, and other negotiable instruments for the payment of money, which, by their form and on their face, purport to be such instruments as are, by the law-merchant, recognized as falling under the designation of "commercial paper." In re Hercules Mut. L. Assur. Soc., 6 Ben. 35, 12 Fed.Cas. 12. Negotiable paper given in due course of business, whether the element of negotiability be given it by the law-merchant or by statute. In re Sykes, D.C.I11., 5 Biss. 113, Fed. Cas.No.13,708; Martin v. McAvoy, 130 Wash. 641, 228 P. 694; Postal Telegraph Cable Co. v. Citizens' Nat. Bank, C.C.A.N.J., 228 F. 601, 604.

COMMERCIAL PARTNERSHIP. A "commercial and trading partnership" is one that buys and sells;—distinguished from one of employment and occupation. Reid v. Linder, 77 Mont. 406, 251 P. 157, 161.

COMMERCIAL RAILROADS. A term used to embrace those railroads intended to carry all freight and passenger traffic between one town or place and another, and usually not constructed upon streets and highways except for short distances;—distinguished from street railways. Anhalt v. Waterloo, C. F. & N. Ry. Co., 166 Iowa, 479, 147 N.W. 928, 931.

COMMERCIAL TRAVELER. A drummer; a traveling salesman who simply exhibits samples of goods kept for sale by his principal, and takes orders frorp purchasers for such goods, which goods are trfterwards to be delivered by the principal to the purchasers, and payment for the goods is to be made by the purchasers to the principal on such delivery. McKindly v. .Dunham, 55 Wis. 515, 13 N.W. 485, 42 Am.Rep. 740.

An agent who sells by sample and on credit, is not Intrusted with the possession of the goods to be sold, has no implied authority to receive payment, and payment to whom will not discharge the purchawr. Butler v. Dorman, 68 Mo. 302, 30 Am.Rep. 795; Seiple v. Irwin, 30 Pa. 513 ; Kornemann v. Monaghan, 24 Mich. 36.

COMMERCIUM. Lat. In the civil law. Commerce; business; trade; dealings in the nature of purchase and sale; a contract.

COMMERCIUM JURE GENTIUM COMMUNE ESSE DEBET, ET NON IN MONOPOLIUM ET PRIVATUM PAUCORUM QUIESTUM CONVERTENDUM. 3 Inst. 181. Commerce, by the law of nations, ought to be common, and not converted to monopoly and the private gain of a few.

COMMINALTY. The commonalty or the people.

COMMINATORIUM. In old practice. A clause sometimes added at the end of writs, admonishing the sheriff to be faithful in executing them. Bract. fol. 398.

COMMINGLE. To put together in one mass. Pfau v. State, 148 Ind. 539, 47 N.E. 927, 929.

COMMINUTED FRACTURE. One in which the bones have been somewhat crushed. Sang v. City of St. Louis, 262 Mo. 454, 171 S.W. 347, 349.

COMMISE. In old French law. Forfeiture; the forfeiture of a fief; the penalty attached to the ingratitude of a vassal. Guyot, Inst.Feod. c. 12.

COMMISSAIRE. In French law. A person who receives from a meeting of shareholders a special authority, viz., that of checking and examining the accounts of a manager or of valuing the apports *en nature, (q.* v.) The name is also applied to a judge who receives from a court a special mission, *e. g.,* to institute an inquiry, or to examine certain books, or to supervise the operations of a bankruptcy. Arg.Fr.Merc.Law, 551.

COMMISSAIRES—PRISEURS. In French law. Auctioneers, who possess the exclusive right of selling personal property at public sale in the towns in which they are established; and they possess the same right concurrently with notaries, *greffiers,* and *huissiers,* in the rest of the arrondissement. Arg.Fr.Merc.Law, 551.

COMMISSARIA LEX. A principle of the Roman law relative to the forfeiture of contracts. See Commissoria Lex.

COMMISSARIAT. The whole body of officers who make up the commissaries' department of an army.

COMMISSARY.

In ecclesiastical law. One who is sent or delegated to execute some office or duty as the representative of his superior; an officer of the bishop, who exercises spiritual jurisdiction in distant parts of the diocese. 1 Holdsw.Hist.L. 369.

In military law. An officer whose principal duties are to supply an army with provisions and stores. As to the rank and duties of such officers in the United States army, see 10 U.S.C.A. § 71 et seq.

COMMISSARY COURT. A Scotch ecclesiastical court of general jurisdiction, held before four commissioners, members of the Faculty of Advocates, appointed by the crown.

COMMISSION. A warrant or authority or letters patent, issuing from the government, or one of its departments, or a court, empowering a person or persons named to do certain acts, or to exercise jurisdiction, or to perform the duties and exercise the authority of an office, (as in the case of an officer in the army or navy.) Bledsoe v. Colgan, 138 Cal. 34, 70 P. 924.

Also, in private affairs, it signifies the authority or instructions under which one person transacts business or negotiates for another.

In a derivative sense, a body of persons to whom a commission is directed. A board or committee officially appointed and empowered to perform certain acts or exercise certain jurisdiction of a public nature or relation; as a "commission of assise."

Civil Law

A species of bailment, being an undertaking, without reward, to do something in respect to an article bailed; equivalent to "mandate."

Commercial Law

The recompense or reward of an agent, factor, broker, or bailee, when the same is calculated as a percentage on the amount of his transactions or on the profit to the principal. In this sense, however, the word occurs perhaps more frequently in the plural. Gray v. Stern, 85 Wash. 645, 149 P. 26, 28. Jackson v. Stanfield, 137 Ind. 592, 57 N.E. 14, 23 L.R.A. 588. Sinclair Coal Co. v. Pittsburg and Ashland Coal and Dock Co., 178 Minn. 114, 226 N.W. 206, 208. But the term may mean simply a compensation; Smith v. Starke, 196 Mich. 311, 162 N.W. 998, 999; and does not necessarily imply a mere per centum valuation; Jenkins v. Locke-Paddon Co., 30 Cal.App. 52, 157 P. 537.

Also, a compensation to an administrator for the faithful discharge of his duties. In re Jula's Estate, 3 N.J.Misc. 976,130 A. 733, 735.

Criminal Law

Doing or perpetration; the performance of an act. Groves v. State, 116 Ga. 516, 42 S.E. 755, 59 L.R.A. 598.

Practice

An authority or writ issuing from a court, in relation to a cause before it, directing and authorizing a person or persons named to do some act or exercise some special function; usually to take the depositions of witnesses.

COMMISSION DAY. In English practice. The opening day of the assises.

COMMISSION DE LUNATICO INQUIRENDO. The same as a commission of lunacy, (see *infra.)* In re Misselwitz, 177 Pa. 359, 35 A. 722.

COMMISSION DEL CREDERE. In commercial law. Where an agent of a seller undertakes to guaranty to his principal the payment of the debt due by the buyer. Story, Ag. 28.

The phrase *"del credere"* is borrowed from the Italian language, in which its signification is equivalent to our word "guaranty" or "warranty."

COMMISSION GOVERNMENT. A method of municipal government in which the legislative power is in the hands of a few persons. State v. Ure, 91 Neb. 31, 135 N.W. 224. Gardner v. Board of Park Directors, 35 Cal.App. 597, 170 P. 672, 673 (mayor held not a "commissioner").

COMMISSION MERCHANT. A term which is synonymous with "factor." It means one who receives goods, chattels, or merchandise for sale, exchange, or other disposition, and who is to receive a compensation for his services, to be paid by the owner, or derived from the sale, etc., of the goods. State v. Thompson, 120 Mo. 12, 25 S.W. 346. One whose business is to receive and sell goods for a commission, being intrusted with the possession of the goods to be sold, and usually selling in his own name. Hughes v. Young, 17 Tenn.App. 24, 65 S.W.2d 858, 864.

Factors are frequently called "commission merchants". and it is said that there is no difference in the meaning of these terms, the latter being perhaps more commonly used in America. Thompson v. Woodruff, 7 Cold. 410; Duguid v. Edwards, 50 Barb., N.Y., 288; Lyon v. Alvord, 18 Conn. 80.

A commission merchant or factor differs from a broker in that he may buy and sell in his own name without disclosing his principal and has the goods in his possession while the broker can only buy or sell in the name of his principal, and has no possession of the goods sold. Slack v. Tucker, 23 Wall. 321, 330, 23 L.Ed. 143; Perkins v. State, 50 Ala. 154, 156. A commission merchant has a lien upon the goods for his charges, advances, and commissions, while the broker has no control of the property and is responsible only for bad faith. A commission merchant or factor has a special property in the goods. Sutton v. Kiel Cheese & Butter Co., 155 Ky. 465, 159 S.W. 950, 951.

A "factor" or "commission merchant" is one who has the actual or technical possession of goods or wares of another for sale, while a "merchandise broker" is one who negotiates the sale of merchandise without having it in his possession or control, being simply an agent with very limited powers. Hughes v. Young, 17 Tenn.App. 24, 65 S.W.2d 858, 864.

See, also, Factor.

COMMISSION OF ANTICIPATION. In English law. An authority under the great seal to collect a tax or subsidy before the day.

COMMISSION OF APPRAISEMENT AND SALE. Where property has been arrested in an admiralty action *in rem* and ordered by the court to be sold, the order is carried out by a commission of appraisement and sale; in some cases (as where the property is to be released on bail and the value is disputed) a commission of appraisement only is required. Sweet.

COMMISSION OF ARRAY. In English law. A commission issued to send into every county officers to muster or set in military order the inhabi-

tants, The introduction of commissions of lieutenancy, which contained, in substance, the same powers as these commissions, superseded them. 2 Steph.Comm. (7th Ed.) 582,

COMMISSION OF ASSIZE. In English practice. A commission which formerly issued from the king, appointing certain persons as commissioners or judges of assize to hold the assizes in association with discreet knights during those years in which the justices in eyre did not come. A commission issued to judges of the high court or court of appeal, authorizing them to sit at the assizes for the trial of civil actions.

COMMISSION OF BANKRUPT. A commission or authority formerly granted by the lord chancellor to such persons as he should think proper, to examine the bankrupt in all matters relating to his trade and effects, and to perform various other important duties connected with bankruptcy matters. But now, under St. 1 & 2 Wm. IV. c. 56, § 12, a fiat issues instead of such commission.

COMMISSION OF CHARITABLE USES. This commission issues out of chancery to the bishop and others, where lands given to charitable uses are misemployed, or there is any fraud or dispute concerning them, to inquire of and redress the same, etc.

COMMISSION OF DELEGATES. When any sentence was given in any ecclesiastical cause by the archbishop, this commission, under the great seal, was directed to certain persons, usually lords, bishops, and judges of the law, to sit and hear an appeal of the same to the king, in the court of chancery. But latterly the judicial committee of the privy council has supplied the place of this commission. Brown.

COMMISSION OF LUNACY. A commission issuing from a court of competent jurisdiction, authorizing an inquiry to be made into the mental condition of a person who *is* alleged to be a lunatic.

A writ issued out of chancery, or such court as may have jurisdiction of the case, directed to a proper officer, to inquire whether a person named therein is a lunatic or not. In re Moore, 68 Cal. 281, 9 P. 164.

COMMISSION OF PARTITION. In the former English equity practice, this was a commission or authority issued to certain persons, to effect a division of lands held by tenants in common desiring a partition; when the commissioners reported, the parties were ordered to execute mutual conveyances to confirm the division. Commissioners appointed to make partition are in the nature of arbitrators. Clough v. Cromwell, 250 Mass. 324, 145 N.E. 473, 474.

COMMISSION OF REBELLION. In English law. An attaching process, formerly issuable out of chancery, to enforce obedience to a process or decree; abolished in August, 1841.

COMMISSION OF 'REVIEW. In English ecclesiastical law. A commission formerly sometimes granted in extraordinary cases, to revise the sentence of the court of delegates. 3 Bl.Comm. 67. Now out of use, the privy council being substituted for the court of delegates, as the great court of appeal in all ecclesiastical causes. 3 Steph. Comm. 432.

COMMISSION OF THE PEACE. In English law. A commission from the crown, appointing certain persons therein named, jointly and severally, to keep the *peace,* etc. Justices of the peace are always appointed by special commission under the great seal, the form of which was settled by all the judges, A. D. 1590, and continues with little alteration to this day. 1 Bl.Comm. 351; 3 Steph. Comm. 39, 40.

COMMISSION OF TREATY WITH FOREIGN PRINCES. Leagues and arrangements made between states and kingdoms, by their ambassadors and ministers, for the mutual advantage of the kingdoms in alliance. Wharton.

COMMISSION OF UNLIVERY. In an action in the English admiralty division, where it is necessary to have the cargo in a ship unladen in order to have it appraised, a commission of unlivery is issued and executed by the marshal. Williams & B. Adm. Jur. 233.

COMMISSION TO EXAMINE • WITNESSES. In practice. A commission issued out of the court in which an action is pending, to direct the taking of the depositions of witnesses who are beyond the territorial jurisdiction of the court.

COMMISSION TO TAKE ANSWER IN CHANCERY. In English law. A commission issued when defendant lives abroad to swear him to such answer. 15 & 16 Vict. c. 86, § 21. Obsolete. See Jud. Acts, 1873, 1875.

COMMISSION TO TAKE DEPOSITIONS. A written authority issued by a court of justice, giving power to take the testimony of witnesses who cannot be personally produced in court. Tracy v. Suydam, 30 Barb. (N. Y.) 110.

COMMISSIONED OFFICERS. In the United States army and navy and marine corps, those of or above the rank of second lieutenant. Davis, Mil. L. 26. Those who hold their rank and office under commissions issued by the president, as distinguished from non-commissioned officers (in the army, including sergeants, corporals, etc.) and warrant officers (in the navy, including boatswains, gunners, etc.) and from privates or enlisted men. Stephens v. Civil Service Commission of New Jersey, 101 N.J.Law 192, 127 A. 808, 811. See Babbitt v. U. S., 16 Ct.C1. 202.

COMMISSIONER. A person to whom a commission is directed by the government or a court. State v. Banking Co., 14 N.J.L. 437; In re Canter, 81 N.Y.S. 338, 40 Misc. 126.

In the governmental system of the United States, this term denotes an officer who is charged with the administration of the laws relating to some particular subject-matter, or the management of some bureau or agency of the govern-

ment. Such are the commissioners of education, of patents, of pensions, of fisheries, of the general land-office, of Indian affairs, etc.

In the state governmental systems, also, and in England, the term is quite extensively used as a designation of various officers having a similar authority and similar duties.

In the commission form of municipal government, the term is applied to any of the several officers constituting the commission. Gardner v. Board of Park Directors, 35 Cal.App. 597, 170 P. 672, 673.

—Commissioners of bail. Officers appointed to take recognizances of bail in civil cases.

—Commissioners of bankrupts. The name given, under the former English practice in bankruptcy, to the persons appointed under the great seal to execute a commission of bankruptcy *(q. v.).*

—Commissioners of circuit courts. Officers appointed by and attached to the former circuit courts of the United States, performing functions partly ministerial and partly judicial. In re Com'rs of Circuit Court, C.C.N.C., 65 F. 317. Their office was abolished by the Act of May 28, 1896 (34 Stat. 184) and they have been succeeded by "United States commissioners." See that title.

—Commissioners of deeds. Officers empowered by the government of one state to reside in another state, and there take acknowledgments of deeds and other papers which are to be used as evidence or put on record in the former state.

--Commissioners of highways. Officers appointed in each county or township, in many of the states, with power to take charge of the altering, opening, repair, and vacating of highways within such county or township.

—Commissioner of patents. The title given by law to the head of the patent office. See 35 USCA § 2.

—Commissioners of sewers. In English law. Commissioners appointed under the great seal, and constituting a court of special jurisdiction; which is to overlook the repairs of the banks and walls of the seacoast and navigable rivers, or, with consent of a certain proportion of the owners and occupiers, to make new ones, and to cleanse such rivers, and the streams communicating therewith. St. 3 & 4 Wm. IV. c. 22, § 10; 3 .Steph. Comm. 442.

—Commissioner of woods and forests. An officer created by act of parliament of 1817, to whom was transferred the jurisdiction of the chief justices of the forest. Inderwick, The King's Peace.

—County commissioners. See County.

COMMISSIONS. The compensation or reward paid to a factor, broker, agent, bailee, executor, trustee, receiver, etc., usually calculated as a percentage on the amount of his transactions or the amount received or expended. See Commission.

COMMISSIVE. Caused by or consisting in acts of commission, as distinguished from neglect, sufferance, or toleration; as in the phrase "commissive waste," which is contrasted with "permissive waste." See Waste.

COMMISSORIA LEX. In Roman law. A law according to which a seller might stipulate that he should be freed from his obligation, and might rescind the sale, if the purchase price were not paid at the appointed time. Also a law by which a debtor and his pledgee might agree that, if the debtor did not pay at the day appointed, the pledge should become the absolute property of the creditor. This, however, was abolished by a law of Constantine. Cod. 8, 35, 3. See Dig. 18, 3; Mackeld. Rom.Law, §§ 447, 461; 2 Kent, Comm. 583.

COMMIT. To perpetrate, as a crime; to perform, as an act. Groves v. State, 116 Ga. 516, 42 S.E. 755, 59 L.R.A. 598.

To send a person to prison by virtue of a lawful authority, for any crime or contempt, or to an asylum, workhouse, reformatory, or the like, by authority of a court or magistrate. People v. Beach, 122 Cal. 37, 54 P. 369.

To deliver a defendant to the custody of the sheriff or marshal, on his surrender by his bail. 1 Tidd, Pr. 285, 287.

COMMITMENT. In practice. The warrant or *mittimus* by which a court or magistrate directs an officer to take a person to prison. Authority for holding in prison one convicted of crime. Ex parte Haynes, 98 Tex.Cr.R. 609, 267 S.W. 490, 493. A process directed to a ministerial officer by which a person is to be confined in prison, usually issued by a court or magistrate. People ex rel. Wojek v. Henderson, 235 N.Y.S. 173, 178, 134 Misc. 228.

A warrant which does not direct an officer to commit a party to prison but only to receive him into custody and safely keep him for further examination, is not a commitment. Gilbert v. U. S., 23 Ct.C1. 218.

The act of sending a person to prison by means of such a warrant or order. Allen v. Hagan, 170 N.Y. 46, 62 N.E. 1086.

A proceeding for the restraining and confining of insane persons for their own and the public's protection. Vance v. Ellerbe, 150 La. 388, 90 So. 735, 740.

COMMITTED IN PRESENCE OF OFFICER. Under statutes authorizing arrest without warrant, when facts and circumstances occurring within officer's observation, in connection with what, under circumstances, may be considered as common knowledge, give him probable cause to believe or reasonable grounds to suspect that such is the case. Noce v. Ritchie, 109 W.Va. 391, 155 S.E. 127, 128.

COMMITTEE. A person, or an assembly or board of persons, to whom the consideration, determination, or management of any matter is committed or referred, as by a court. Lloyd v. Hart, 2 Pa. 473, 45 Am.Dec. 612; Farrar v. Eastman, 5 Me.

345; Blaisdell v. Inhabitants of Town of York, 110 Me. 500, 87 A. 361, 370.

An individual or body to whom others have delegated or committed a particular duty, or who have taken on themselves to perform it in the expectation of :their act being confirmed by the body they profess to represent or act for. 15 Mees. & W. 529.

The term is especially applied to the person or persons who are invested, by order of the proper court, with the guardianship of the person and estate of one who has been adjudged a lunatic.

In parliamentary law. A portion of a legislative body, comprising one or more members, who are charged with the duty of examining some matter specially referred to them by the house, or of deliberating upon it, and reporting to the house the result of their investigations or recommending a course of action.

A committee may be appointed for one special occasion, or it may be appointed to deal with all matters which may be referred to it during a whole session or during the life of the body. In the latter case, it is called a "standing committee." It is usually composed of a comparatively small number of members, but may include the whole house.

Joint committee. A joint committee of a legislative body comprising two chambers is a committee consisting of representatives of each of the two houses, meeting and acting together as one committee.

Secret committee. A secret committee of the house of commons is a committee specially appointed to investigate a certain matter, and to which secrecy being deemed necessary in furtherance of its objects, its proceedings are conducted with closed doors, to the exclusion of all persons not members of the committee. All other committees are open to members of the house, although they may not be serving upon them. Brown.

COMMITTING MAGISTRATE. An inferior judicial officer who is invested with authority to conduct the preliminary hearing of persons charged with crime, and either to discharge them for lack of sufficient prima facie evidence or to commit them to jail to await trial or (in some jurisdictions) to accept bail and release them thereon. The term is said to be synonymous with "examining court." State v. Rogers, 31 N.M. 485, 247 P. 828, 833.

COMMITTITUR. In practice. An order or minute, setting forth that the person named in it *is committed* to the custody of the sheriff.

COMMITTITUR PIECE. In English law. An instrument in writing on paper or parchment, which charges a person, already in prison, in execution at the suit of the person who arrested him. 2 Chit.Archb.Pr. (12th Ed.) 1208.

COMMIXTIO, or COMMIXTION. In the civil law. The mixing together or confusion of things, dry or solid, belonging to different owners, as distinguished from *confusio,* which has relation to liquids. *Lec. Elem. du Dr. Rom. §§* 370, 371; Story, Bailm. § 40; 1 Bouvier, Inst. n. 506.

COMMODATE. Where property is loaned gratuitously by owner for sole benefit, accommodation, and use of borrower, and specific thing loaned is to be returned. The Pegeen, D.C.Cal., 14 F.Supp. 748, 751. See, also, Commodatum.

COMMODATI ACTIO. Lat. In the civil law. An action of loan; an action for a thing lent. An action given for the recovery of a thing loaned, *(commodatum,)* and not returned to the lender. Inst. 3, 15, 2; Id. 4, 1, 16.

COMMODATO. In Spanish law. A contract by which one person lends gratuitously to another some object not consumable, to be restored to him in kind at a given period; the same contract as *commodatum (q. v.).*

COMMODATUM. A contract by which one of the parties binds himself to return to the other certain personal chattels which the latter delivers to him to be used by him without reward; loan for use. Slack v. Bryan, 299 Ky. 132, 184 S.W.2d 873, 876.

A gratuitous loan of goods to be temporarily used by the bailee, and returned in specie. Hanes v. Shapiro & Smith, 168 N.C. 24, 84 S.E. 33, 35. He who lends to another a thing for a definite time, to be enjoyed and used under certain conditions, without any pay or reward, is called *"commodans ;"* the person who receives the thing is :called *"commodatarius,"* and the contract is called *"commodatum."* It differs from *locatio* and *conductio,* in this : that the use of the thing is gratuitous. Dig. 13, 6; Inst. 3, 2, 14; Story, Bailm, § 221. Coogs v. Bernard, 2 Ld.Raym. 909; Adams v. Mortgage Co., 82 Miss. 263, 34 So. 482, 17 L.R.A.,N.S., 138, 100 Am.St.Rep. 633; World's Columbian Exposition Co. v. Republic of France, C.C.A. Ill., 96 F. 693, 38 C.C.A. 483.

COMMODITIES. Those things which are useful or serviceable, particularly articles of merchandise movable in trade. American League Baseball Club of Chicago v. Chase, 149 N.Y.S. 6, 15, 86 Misc. 441.

Goods, wares, and merchandise of any kind; movables; articles of trade or commerce. Queen Ins. Co. v. State, 86 Tex. 250, 24 S.W. 397, 22 L.R. A. 483. Movable articles of value; things that are bought and sold. United States v. Sischo, D.C. Wash., 262 F. 1001, 1005. See, also, Commodity.

This word is a broader term than merchandise, and, in referring to commerce may include almost any article of movable or personal property. Pound v. Lawrence, Tex. Civ. App., 233 S. W. 359, 361; Shuttleworth v. State, 35 Ala. 415; State v. Henke, 19 Mo. 225.

Labor has been held not to be a commodity. Rohlf v. Kasemeier, 140 Iowa 182, 118 N.W. 276, 23 L.R.A., N.S., 1285. But it has been held that the supplying of telephone service is the supplying of a commodity of commerce ; McKinley Telephone Co. v. Cumberland Telephone Co., 152 Wis. 359, 140 N.W. 38, 39; and it has also been thought that the privilege of receiving property by will or intestate succession is a commodity subject to the Massachusetts excise law ; Dana v. Dana, 226 Mass. 297, 115 N.E. 418, 419.

COMMODITIES CLAUSE. A clause in the act of Congress, June 29, 1906 (49 USCA § 1 (8), providing that it shall be unlawful for any railroad company to transport commodities (excepting timber and its manufactured products) manufactured, mined or produced by it, or under its authority, or which it may own in whole or in part, or in which it may have any interest, direct or indirect, except such articles or commodities as

may be necessary and intended for its use in its business. U. S. v. R. Co., 31 S.Ct. 387, 220 U.S. 257, 55 L.Ed. 458.

COMMODITY. In the most comprehensive sense, convenience, accommodation, profit, benefit, advantage, interest, commodiousness.

In the commercial sense, any movable or tangible thing that is produced or used as the subject of barter or sale. People v. Epstean, 170 N.Y.S. 68, 79, 102 Misc. 476. See Commodities.

COMMODITY RATE. With reference to railroads, a rate which applies to a specific commodity alone ;—distinguished from a "class rate," meaning a single rate which applies to a number of articles of the same general character. Norfolk Southern R. Co. v. Freeman Supply Corporation, 145 Va. 207, 133 S.E. 817, 818.

COMMODORE. A grade in the United States navy, superior to a captain. Omitted from the active list. Act of March 3, 1899, c. 413, 30 Stat. 1004. See 34 USCA § 1.

COMMODUM EX INJURIA SUA NEMO HABERE DEBET. No person ought to have advantage from his own wrong. Jenk.Cent. 161; Finch, Law, b. 1, c. 3, n. 62.

COMMON, n. An incorporeal hereditament which consists in a profit which one man has in connection with one or more others in the land of another. Trustees v. Robinson, 12 Serg. & R. (Pa.) 31; Thomas v. Inhabitants of Marshfield, 10 Pick. (Mass.) 364; 3 Kent 403; United States v. 1,010.8 Acres, More or Less, Situate in Sussex County, Del., D.C.Del., 56 F.Supp. 120, 132, 134,

In English law, is an incorporeal right which lies in grant, originally commencing on some agreement between lords and tenants, which by time has been formed into prescription, and continues good, although there be no deed or instrument to prove the original contract. 4 Coke, 37; 1 Crabb, Real Prop. p. 258, § 268.

Common, or a right of common, is a right or privilege which several persons have to the produce of the lands or waters of another. Van Rensselaer v. Radcliff, 10 Wend., N.Y., 647, 25 Am.Dec. 582.

Also an uninclosed piece of land set apart for public or municipal purposes, in many cities and villages of the United States. Newell v. Hancock, 67 N.H. 244, 35 A. 253. United States v. 1,010.8 Acres, More or Less, Situate in Sussex County, Del., D.C.Del., 56 F.Supp. 120, 122, 134.

—Common appendant. A right annexed to the possession of arable land, by which the owner is entitled to feed his beasts on the lands of another, usually of the owner of the manor of which the lands entitled to common are a part. 2 Bl.Comm. 33; Van Rensselaer v. Radcliff, 10 Wend. (N.Y.) 648.

—Common appurtenant. A right of feeding one's beasts on the land of another, (in common with the owner or with others,) which is founded on a grant, or a prescription which supposes a grant. 1 Crabb, Real Prop. p. 264, § 277.

This kind of common arises from no connection of tenure, and is against common right; it may commence by grant within time of memory, or, in other words, may be created at the present day ; it may be claimed as annexed to any kind of land, and may be claimed for beasts not commonable, as well as those that are. 2 Bl.Comm. 33; Van Rensselaer v. Radcliff, 10 Wend., N.Y.,. 649.

—Common because of vicinage is where the inhabitants of two townships which lie contiguous to each other have usually intercommoned with one another, the beasts of the one straying mutually into the other's fields, without any molestation from either. 2 Bl.Comm. 33; Co. Litt. 122a; 4 Co. 38a; 10 Q.B. 581, 589, 604; Smith v. Floyd, 18 Barb. (N.Y.) 523.

This Is, indeed, only a permissive right, intended to excuse what, in strictness, is a trespass in both, and to prevent a multiplicity of suits, and therefore either township may inclose and bar out the other, though they have intercommoned time out of mind.

—Common in gross, or at large. A species of common which is neither appendant nor appurtenant to *land,* but is annexed to a man's *person,* being granted to him and his heirs by deed; or it may be claimed by prescriptive right, as by a parson of a church or the like corporation sole. 2 Bl.Comm. 34. It is a separate inheritance, entirely distinct from any other landed property, vested in the person to whom the common right belongs. 2 Steph.Comm. 6; Mitchell v. D'Olier, 68 N.J.L. 375, 53 A. 467, 59 L.R.A. 949.

—Common of digging. Common of digging, or common in the soil, is the right to take for one's own use part of the soil or minerals in another's land; the most usual subjects of the right are sand, gravel, stones, and clay. It is of a very similar nature to common of estovers and of turbary. Elton, Com. 109.

—Common of estovers. A liberty of taking necessary wood for the use or furniture of a house or farm from off another's estate, in common with the owner or with others. 2 Bl.Comm. 35. It may be claimed, like common of pasture, either by grant or prescription. 2 Steph.Comm. 10; Plowd. 381; Van Rensselaer v. Radcliff, 10 Wend. (N.Y.) 648.

—Common of fishery. The same as Common of piscary. See *infra.*

—Common of fowling. In some parts of the country a right of taking wild animals (such as conies or wildfowl) from the land of another has been found to exist; in the case of wildfowl, it is called a "common of fowling." Elton, Corn. 118.

—Common of pasture. The right or liberty of pasturing one's cattle upon another man's land. It may be either appendant, appurtenant, in gross, or because of vicinage. Van Rensselaer v. Radcliff, 10 Wend. (N.Y.) 647.

—Common of piscary. The right or liberty of fishing in another man's water, in common with the owner or with other persons. 2 Bl.Comm. 34. A liberty or right of fishing in the water covering the soil of another person, or in a river running through another's land. 3 Kent, Comm. 409. Hardin v. Jordan, 11 S.Ct. 808, 140 U.S. 371, 35 L.Ed. 428. It is quite different from a common fishery,

with which, however, it is frequently confounded. See Fishery.

—Common of shack. A species of common by vicinage prevailing in the counties of Norfolk, Lincoln, and Yorkshire, in England; being the right of persons occupying lands lying together in the same common field to turn out their cattle after harvest to feed promiscuously in that field. 2 Steph.Comm. 6, 7; 5 Coke, 65; 1 B. & Ald. 710.

—Common of turbary. In its modern sense the right of taking peat or turf from the waste land of another, for fuel in the commoner's house. Williams, Common, 187; Van Rensselaer v. Radcliff, 10 Wend. (N.Y.) 647; 4 Co. 37; 3 Atk. 189, Noy, 145; 7 East, 127.

—Common sans nombre. Common without number, that is, without *limit* as to the *number* of cattle which may be turned on; otherwise called "common without stint." Bract. fols. 53b, 222b; 2 Steph.Comm. 6, 7; 2 Bl.Comm. 34. United States v. 1,010.8 Acres, More or Less, Situate in Sussex County, Del., D.C.Del., 56 F.Supp. 120, 133.

—Common, tenants in. See Tenants in Common.

—Common without stint. Another name for Common sans nombre. See *supra.*

COMMON, *adj.* Usual, ordinary, accustomed; shared among several; owned by several jointly. Koen v. State, 35 Neb. 676, 53 N.W. 595, 17 L.R.A. 821. Belonging or pertaining to many or to the majority; generally or prevalent, of frequent or ordinary occurrence or appearance; familiar by reason of frequency. Webb v. New Mexico Pub. Co., 47 N.M. 279, 141 P.2d 333, 335. Also, usual, customary, and habitual, professed, or confessed, and used indefinitely in various terms implying illegal or criminal conduct, such as common scold, common thief, etc. Levine v. State, 166 A. 300, 302, 110 N.J.L. 467.

As to common "Bail," "Barretor," "Carrier," "Chase," "Condedit," "Council," "Counts," "Day," "Debtor," "Diligence," "Drunkard," "Error," "Fishery," "Highway," "Informer," "Inn," "Intendment," "Intent," "Jury," "Labor," "Nuisance," "Occupant," "Property," "School," "Scold," "Seal," "Seargeant," "Stock," "Traverse," "Vouchee," "Wall," see those titles.

—Common appearance. That which could be filed by the plaintiff, who could enter a rule on the defendant to plead, where the defendant, after due service of process on him, had removed from the jurisdiction without having entered an appearance, or could not be found. 12 Geo. II., c. 29; 1 Troub. & Haly, Pr. 159; Bender v. Ryan, 9 Wkly. Notes Cas. (Pa.) 144.

—Common assurances. The several modes or instruments of conveyance established or authorized by the law of England. Called "common" because thereby every *man's* estate is assured to him. 2 Bl.Comm. 294. The legal evidences of the translation of property, whereby every person's estate is assured to him, and all controversies, doubts, and difficulties are either prevented or removed. Wharton.

—Common causes or suits. A term anciently used to denote civil actions, or those depending between subject and subject, as distinguished from *pleas of the crown.* Dallett v. Feltus, 7 Phila. (Pa.) 627.

—Common condidit. See Condedit.

—Common danger. "Common danger" which gives a right to contribution in general average does not mean equal danger; hence, the fact that a part of the cargo of a stranded steamship is of a kind which is in little danger of injury does not relieve it of the liability to contribute. Willcox, Peck & Hughes v. American Smelting & Refining Co., D.C.N.Y., 210 F. 89, 91.

—Common design. In criminal law. Community of intention between two or more persons to do an unlawful act. State v. Hill, 273 Mo. 329, 201 S.W. 58, 60.

—Common enterprise. See Joint enterprise.

—Common fine. In old English law. A *certain* sum of money which the residents in a leet paid to the lord of the leet, otherwise called "head silver," "cert money," *(q. v.,)* or *"certum letce."* Termes de la Ley; Cowell; Fleta; Wharton. A sum of money paid by the inhabitants of a manor to their lord, towards the charge of holding a court leet. Bailey, Diet.

—Common form. A will is said to be proved in common form when the executor proves it on his own oath; as distinguished from "proof by witnesses," which is necessary when the paper propounded as a will is disputed. Hubbard v. Hubbard, 7 Or. 42; Sutton v. Hancock, 118 Ga. 436, 45, S.E. 504.

—Common hall. A court in the city of London, at which all the citizens, or such as are free of the city, have a right to attend.

—Common learning. Familiar law or doctrine.. Dyer, 27b, 33.

—Common liquor dealer. In Florida, one who, being charged with unlawfully engaging in and carrying on the business of a dealer in liquors, has been before convicted of a like offense and duly sentenced therefor. Thomas v. State, 74 Fla. 200,. 76 So. 780. See, also, Common thief, *infra.*

—Common peril. See Common danger, *supra.*

—Common place. Common pleas. The English court of common pleas is sometimes so called in the old books.

—Common prayer. The liturgy, or public form of prayer prescribed by the Church of England to be used in all churches and chapels, and which the clergy are enjoined to use under a certain penalty.

—Common repute. The prevailing belief in a given community as to the existence of a certain fact

or aggregation of facts. Brown v. Foster, 41 S. C. 118, 19 S.E. 299.

—Common right. A term applied to rights, privileges, and immunities appertaining to and enjoyed by all citizens equally and in common, and which have their foundation in the common law. Co. Inst. 142a; Spring Valley Waterworks v. Schottler, 62 Cal. 106.

—Common seller. A common seller of any commodity (particularly under the liquor laws of many states) is one who sells it frequently, usually, customarily, or habitually; in some states, one who is shown to have made a certain number of sales, either three or five. State v. O'Conner, 49 Me. 596; State v. Nutt, 28 Vt. 598; Moundsville v. Fountain, 27 W.Va. 194; Com. v. Tubbs, 1 Cush. (Mass.) 2.

—Common sense. Sound practical judgment., that degree of intelligence and reason, as exercised upon the relations of persons and things and the ordinary affairs of life, which is possessed by the generality of mankind, and which would suffice to direct the conduct and actions of the individual in a manner to agree with the behavior of ordinary persons.

—Common service. That service in which are engaged (with reference to the fellow-servant rule) all those who enter into the service of a common master, except those who become heads of and vested with absolute control of separate departments or branches of a great and diversified business. Union Pac. R. Co. v. Marone, C.C.A. Neb., 246 F. 916, 923.

The term, in its broadest and most obvious sense, would include all activities prosecuted in the business of the master which have for their purpose the attainment of one common end ; nevertheless, an employee, invested with the duty of overseeing, directing, and controlling workmen, is not a fellow servant with respect to the discharge of those duties, but is a representative of the master. Funk v. Fulton Iron Works Co., 311 Mo. 77, 277 S. W. 566, 569.

—Common thief. One who by practice and habit is a thief; or, in some states, one who has been convicted of three distinct larcenies at the same term of court. Stevens v. Com., 4 Metc. (Mass.) 364.

—Common use. This phrase, as used in an antitrust law extending to contracts affecting the prices of articles or commodities in "common use," describes articles used by the people in general; such articles or commodities as are in general use or used to a great extent in the homes of the people; the articles which are produced to be sold to the people, to be consumed and used by the people in general, and to be found for sale in all the marts of trade. People v. Epstean, 102 Misc. 476, 170 N.Y.S. 68, 75. It suggests the opposite of casual use. Geis v. State, 126 Md. 265, 94 A. 909, 910.

—Common victualer. The keeper of a restaurant or public eating house, where the food sold is eaten on the premises. Commonwealth v. Meckel, 221 Mass. 70, 108 N.E. 917.

—Common weal. The public or common good or welfare.

—Common woman. One who is low, inferior, vulgar, or coarse; also, one who is unchaste. But the term does not necessarily impute unchastity. Daniel v. Moncure, 58 Mont. 193, 190 P. 983, 985.

COMMON BAR. In pleading. (Otherwise called "blank bar.") A plea to compel the plaintiff to assign the particular place where the trespass has been committed. Steph.Pi. 256.

COMMON BENCH. The ancient name for the English court of common pleas. Its original title appears to have been simply "The Bench," but it was designated "Common Bench" to distinguish it from the "King's Bench," and because in it were tried and determined the causes of *common* persons, *i. e.,* causes between subject and subject, in which the crown had no interest.

COMMON ENEMY DOCTRINE. Recognized as to surface waters in but a few states, under which no natural easement or servitude exists in favor of the superior or higher land as to mere surface water, or such as falls or accumulates by rains or the melting of snow; and the proprietor of the inferior or lower tenement or estate may at his option lawfully obstruct or hinder the flow of such water thereon, and in so doing may turn back or off of his own lands, and onto and over the lands of other proprietors, such water, without liability by reason of such obstruction or diversion. Miller v. Letzerich, 121 Tex. 248, 49 S.W.2d 404, 411, 85 A.L.R. 451.

COMMON HUMANITY DOCTRINE. Where a passenger becomes sick or is injured while en route, carrier owes duty under "common humanity doctrine" to render to passenger such reasonable care and attention as common humanity would dictate. Alabama Great S. R. Co. v. Taylor, 190 Miss. 69, 199 So. 310, 312.

COMMON KNOWLEDGE. Is what court may declare applicable to action without necessity of proof. It is knowledge that every intelligent person has. Strain v. Isaacs, 59 Ohio App. 495, 18 N. E.2d 816, 825. It includes matters of learning, experience, history, and facts of which judicial notice may be taken. Shelley v. Chilton's Adm'r, 236 Ky. 221, 32 S.W.2d 974, 977.

COMMON LAW. As distinguished from the Roman law, the modern civil law, the canon law, and other systems, the common law is that body of law and juristic theory which wa ' originated, developed, and formulated and is adr. tinistered in England, and has obtained among nost of the states and peoples of Anglo-Saxon stock. Lux v. Haggin, 69 Cal. 255, 10 P. 674.

As distinguished from law created by the enactment of legislatures, the common law comprises the body of those principles and rules of action, relating to the government and security of persons and property, which derive their authority solely from usages and customs of immemorial antiquity, or from the judgments and decrees of

the courts recognizing, affirming, and enforcing such usages and customs; and, in this sense, particularly the ancient unwritten law of England. 1 Kent, Comm. 492. Western Union Tel. Co. v. Call Pub. Co., 21 S.Ct. 561, 181 U.S. 92, 45 L.Ed. 765; Barry v. Port Jervis, 72 N.Y.S. 104, 64 App. Div. 268; U. S. v. Miller, D.C.Wash., 236 F. 798, 800.

As distinguished from equity law, it is a body of rules and principles, written or unwritten, which are of fixed and immutable authority, and which must be applied to controversies rigorously and in their entirety, and cannot be modified to suit the peculiarities of a specific case, or colored by any judicial discretion, and which rests confessedly upon custom or statute, as distinguished from any claim to ethical superiority. Klever v. Seawall, C.C.A.Ohio, 65 F. 395, 12 C.C.A. 661.

As distinguished from ecclesiastical law, it is the system of jurisprudence administered by the purely secular tribunals.

As concerns its force and authority in the United States, the phrase designates that portion of the common law of England (including such acts of parliament as were applicable) which had been adopted and was in force here at the time of the Revolution. This, so far as it has not since been expressly abrogated, is recognized as an organic part of the jurisprudence of most of the United States. Industrial Acceptance Corporation v. Webb, Mo.App., 287 S.W. 657, 660.

The "common law" of England, which is the rule of decision in all courts of Montana, in so far as it is not repugnant to the Constitution of the United States or the Constitution or laws of that state, means that body of jurisprudence as applied and modified by the courts of this country up to the time it was adopted in Montana. Herrin v. Sutherland, 74 Mont. 587, 241 P. 328, 330, 42 A.L.R. 937. See, also, Norvell-Wilder Hardware Co. v. McCamey, Tex. Civ.App., 290 S.W. 772, 773; Fletcher v. Los Angeles Trust & Savings Bank, 182 Cal. 177, 187 P. 425, 427.

The common law of England, adopted by Pol. Code Cal. § 4468, does not refer solely to the lex non scripta, the common law unmodified by statute, but contemplates the whole body of jurisprudence as it stood, influenced by statute at the time when the Code section was adopted, and also embraces equity. Martin v. Superior Court of California in and for Alameda County, 176 Cal. 289, 168 P. 135, 136, L.R.A.1918B, 313.

In a wider sense than any of the foregoing, the "common law" may designate all that part of the positive law, juristic theory, and ancient custom of any state or nation which is of general and universal application, thus marking off special or local rules or customs.

For "Federal Common Law," see that title.

As a compound adjective "common-law" is understood as contrasted with or opposed to "statutory," and sometimes also to "equitable" or to "criminal." See examples below.

COMMON-LAW ACTION. A civil suit, as distinguished from a criminal prosecution or a proceeding to enforce a penalty or a police regulation; not necessarily an action which would lie at common law. Kirby v. Railroad Co., C.C.Iowa, 106 F. 551; U. S. v. Block, 24 Fed.Cas. 1,174.

COMMON-LAW ASSIGNMENTS. Such forms of assignments for the benefit of creditors as were known to the common law, as distinguished from such as are of modern invention or authorized by statute. Ontario Bank v. Hurst, C.C.A.Mich., 103 F. 231, 43 C.C.A. 193.

COMMON-LAW CHEAT. The obtaining of money or property by means of a false token, symbol, or device; this being the definition of a cheat or "cheating" at common law. State v. Renick, 33 Or. 584, 56 Pac. 275, 44 L.R.A. 266, 72 Am.St.Rep. 758.

COMMON-LAW CONTEMPT. A name sometimes applied to proceedings for contempt which are criminal in their nature, as distinguished from those which are intended as purely civil remedies ordinarily arising out of the alleged violation of some order entered in the course of a chancery proceeding. People v. Samuel, 199 Ill.App. 294, 297; People v. Buconich, 199 Ill.App. 410, 412.

COMMON-LAW COURTS. In England, those administering the common law. Equitable L. Assur. Soc. v. Paterson, 41 Ga. 364, 5 Am.Rep. 535.

COMMON-LAW CRIME. One punishable by the force of the common law, as distinguished from crimes created by statute. In re Greene, C.C. Ohio, 52 F. 104.

COMMON-LAW JURISDICTION. Jurisdiction of a court to try and decide such cases as were cognizable by the courts of law under the English common law; the jurisdiction of those courts which exercise their judicial powers according to the course of the common law. U. S. v. Power, 27 Fed.Cas. 607.

COMMON-LAW LARCENY. See Larceny.

COMMON-LAW LIEN. One known to or granted by the common law, as distinguished from statutory, equitable, and maritime liens; also one arising by implication of law, as distinguished from one created by the agreement of the parties. The Menominie, D.C.Minn., 36 F. 197; Tobacco Warehouse Co. v. Trustee, 117 *Ky.* 478, 78 S.W. 413, 64 L.R.A. 219.

It is a right extended to a person to retain that which is in his possession belonging to another, until the demand or charge of the person in possession is paid or satisfied. Whiteside v. Rocky Mountain Fuel Co., C.C.A.Colo., 101 F.2d 765, 769; Goldwater v. Mendelson, 8 N.Y.S. 627, 629, 170 Misc. 422.

COMMON-LAW MARRIAGE. One not solemnized in the ordinary way, but created by an agreement to marry, followed by cohabitation; a consummated agreement to marry, between persons legally capable of making marriage contract, per verba de prwsenti, followed by cohabitation. Collins v. Hoag and Rollins, 121 Neb. 716, 238 N.W. 351.

There must be a public and continued recognition of such relation by the parties as distinguished from occasional or incidental recognition. Whitaker v. Shenault, Tex.Civ. App., 172 S.W. 202, 203.

COMMON-LAW MORTGAGE. One possessing the characteristics or fulfilling the requirements of a mortgage at common law; not known in Louisiana, where the civil law prevails; but such a mortgage made in another state and affecting lands in Louisiana, will be given effect there as a "conventional" mortgage, affecting third persons after due inscription. Gates v. Gaither, 46 La.Ann. 286, 15 So. 50.

COMMON-LAW PROCEDURE ACTS. Three acts of parliament, passed in the years 1852, 1854, and 1860, respectively, for the amendment of the procedure in the common-law courts. The common-law procedure act of 1852 is St. 15 & 16 Vict. c. 76; that of 1854, St. 17 & 18 Vict. c. 125; and that of 1860, St. 23 & 24 Vict. c. 126. Mozley & Whitley.

COMMON-LAW REMEDY. This phrase, within the meaning of U. S. Judicial Code 1911, § 256 (Act March 3, 1911, c. 231, 36 Stat. 1100, see Historical and Revision Notes under 28 U.S.C.A. § 1333), was not limited to remedies in the common-law courts, but embraced all methods of enforcing rights and redressing injuries known to the common or statutory law. Kennerson v. Thames Towboat Co., 89 Conn. 367, 94 A. 372, 375, L.R.A. 1916A, 436. See, also, Northern Pacific S. S. Co. v. Industrial Acc. Commission of California, 174 Cal. 346, 163 P. 199, 202. See Notes of Decisions under 28 U.S.C.A. § 1333.

The "right of a common-law remedy," saved to suitors in actions maritime in their nature arising under charter parties by U. S. Judicial Code 1911, § 24, par. 3 (see Historical and Revision Notes under 28 U.S.C.A. § 1333) did not include attempted changes by the states in the substantive admiralty law, but did include all means, other than proceedings in admiralty, which may be employed to enforce the right or to redress the injury involved, and included remedies in pais, as well as proceedings in court; judicial remedies conferred by statute, as well as those existing in the common law; remedies in equity, as well as those enforceable in a court of law. Red Cross Line v. Atlantic Fruit Co., 44 S.Ct. 274, 277, 264 U.S. 109, 68 L.Ed. 582.

COMMON-LAW TRADE-MARK. One appropriated under common-law rules, regardless of statutes. Stratton & Terstegge Co. v. Stiglitz Furnace Co., 258 Ky. 678, 81 S.W.2d 1, 3.

COMMON-LAW WIFE. A woman who was party to a "common-law marriage," as above defined; or one who, having lived with a man in a relation of concubinage during his life, asserts a claim, after his death, to have been his wife according to the requirements of the common law. In re Brush, 49 N.Y.S. 803, 25 App.Div. 610.

COMMON LAWYER. A lawyer learned in the common law.

COMMON NIGHTWALKER. See Night Walkers.

COMMON NUISANCE. A danger or damage threatening the public. Canfield v. Quayle, 10 N. Y.S.2d 781, 784, 170 Misc. 621.

COMMON OPINION IS GOOD AUTHORITY IN LAW. Co.Litt. 186a, Bank of Utica v. Mersereau, 3 Barb.Ch. (N.Y.) 528, 577, 49 Am.Dec. 189.

COMMON PLEAS. The name of a court of record having general original jurisdiction in civil suits.

COMMON PLEAS, THE COURT OF. See Court of Common Pleas.

COMMON RECOVERY. In conveyancing. A species of common assurance, or mode of conveying lands by matter of record, formerly in frequent use in England. It was in the nature and form of an action at law, carried regularly through, and ending in a *recovery* of the lands against the tenant of the freehold; which recovery, being a supposed adjudication of the right, bound all persons, and vested a free and absolute fee-simple in the recoverer. 2 Bl.Comm. 357. Christy v. Burch, 25 Fla. 942, 2 So. 258. Common recoveries were abolished by the statutes 3 & 4 Wm. IV. c. 74.

They were resorted to when the object was to create an absolute bar of estates tail, and of the remainders and reversions expectant on the determination of such estates. 2 BlaComm. 357. Though it has been used in some of the states, this form of conveyance is practically obsolete, easier and less expensive modes of making conveyances having been substituted. Frost v. Cloutman, 7 N. H. 9, 26 Am. Dec. 723.

COMMONABLE. Entitled to common. Commonable beasts are either beasts of the plow, as horses and oxen, or such as manure the land, as kine and sheep. Beasts not commonable are swine, goats, and the like. Co. Litt. 122a; 2 Bl.Comm. 33.

COMMONALTY. The great body of citizens; the mass of the people, excluding the nobility.

The body of people composing a municipal corporation, excluding the corporate officers.

The body of a society or corporation, as distinguished from the officers. 1 Perr. & D. 243.

Charters of incorporation of the various tradesmen's societies, etc., in England are usually granted to the master, wardens, and commonalty of such corporation.

COMMONANCE. The commoners, or tenants and inhabitants, who have the right of common or commoning in open field. Cowell.

COMMONERS. In English law. Persons having a right of *common.* So called because they have a right to pasture on the waste, in common with the lord. 2 H.B1. 389.

COMMONS. The class of subjects in Great Britain exclusive of the royal family and the nobility. They are represented in parliament by the house of commons.

Part of the demesne land of a manor, (or land the property of which was in the lord,) which, being uncultivated, was termed the "lord's waste," and served for public roads and for common of pasture to the lord and his tenants. 2 Bl.Comm. 90.

Squares; pleasure grounds and spaces or open places for public use or public recreation owned by towns ;—in modern usage usually called "parks." Jones v. City of Jackson, 104 Miss. 449, 61 So. 456, 457.

COMMONS, HOUSE OF. See House of Commons.

COMMONTY. In Scotch law. Land possessed in common by different proprietors, or by those having acquired rights of servitude. Bell.

COMMONWEALTH. The public or common weal or welfare. This cannot be regarded as a technical term of public law, though often used in political science. It generally designates, when so employed, a republican frame of government,—one in which the welfare and rights of the entire mass of people are the main consideration, rather than the privileges of a class or the will of a monarch; or it may designate the body of citizens living under such a government.

Sometimes it may denote the corporate entity, or the government, of a jural society (or state) possessing powers of self-government in respect of its immediate concerns, but forming an integral part of a larger government, (or nation.) State v. Lambert, 28 S.E. 930, 44 W.Va. 308.

In this latter sense, it is the official title of several of the United States (as Pennsylvania, Massachusetts, Virginia, and Kentucky), and would be appropriate to them all. In the former *sense,* the word was used to designate the English government during the protectorate of Cromwell.

See Government; Nation; State.

COMMORANCY. The dwelling in any place as an inhabitant; which consists in usually lying there. 4 Bl.Comm. 273. In American law it is used to denote a mere temporary residence. Pullen v. Monk, 82 Me. 412, 19 A. 909; Gilman v. Inman, 85 Me. 105, 26 A. 1049.

COMMORANT. Staying or abiding; dwelling temporarily in a place. One residing in a particular town, city, or district. Barnes, 162.

COMMORIENTES. Several persons who perish at the same time in consequence of the same calamity.

COMMORTH, or COMORTH. A contribution which was gathered at marriages, and when young priests said or sung the first masses. Prohibited by 26 Hen. VIII. c. 6. Cowell.

COMMOTE. Half a cantred or hundred in Wales, containing fifty villages. Also a great seignory or lordship, and may include one or divers manors. Co. Litt. 5.

COMMOTION. A "civil commotion" is an insurrection of the people for general purposes, though it may not amount to rebellion where there is a usurped power. 2 Marsh.Ins. 793; Boon v. Insurance Co., 40 Conn. 584; Grame v. Assur. Soc., 5 S.Ct. 150, 112 U.S. 273, 28 L.Ed. 716; Spruill v. Insurance Co., 46 N.C. 127.

A civil commotion is an uprising among a mass of people which occasions a serious and prolonged disturbance and infraction of civil order not attaining the status of war or an armed insurrection; it is a wild and irregular action of many persons assembled together. Hartford Fire Ins. Co., Hartford, Conn. v. War Eagle Coal Co., C.C. A.W.Va., 295 F. 663, 665. The term refers to political disorders, not to an economic disturbance. The Poznan, D.C.N.Y., 276 F. 418, 427.

COMMUNE, *adj.* Lat. See Communis.

COMMUNE, n. A self-governing town or village. The name given to the committee of the people in the French revolution of 1793; and again, in the revolutionary uprising of 1871, it signified the attempt to establish absolute self-government *in* Paris, or the mass of those concerned in the attempt. In old French law, it signified any Municipal corporation. And in old English law, the commonalty or common people. 2 Co.Inst. 540.

COMMUNE CONCILIUM. The King's Council. See Privy Council.

COMMUNE CONCILIUM REGNI. The common council of the realm. One of the names of the English parliament. See Communitas Regni An-

COMMUNE FORUM. The common place of justice. The seat of the principal courts, especially those that are fixed.

COMMUNE PLACITUM. In old English law. A common plea or civil action, such as an action of debt.

COMMUNE VINCULUM. A common or mutual bond. Applied to the common stock of consanguinity, and to the feodal bond of fealty, as the common bond of union between lord and tenant. 2 Bl.Comm. 250; 3 Bl.Comm. 230.

COMMUNI CUSTODIA. In English law. An obsolete writ which anciently lay for the lord, whose tenant, holding by knight's service, died, and left his eldest son under age, against a stranger that entered the land, and obtained the ward of the body. Reg. Orig. 161.

COMMUNI DIVIDUNDO. In the civil law. An action which lies for those who have property in common, to procure a division. It lies where parties hold land in common but not in partnership. Calvin.

COMMUNIA. In old English law. Common things, *res communes.* Such as running water, the air, the sea, and sea shores. Bract. fol. *7b.*

COMMUNIA PLACITA. In old English law. Common pleas or actions; those between one subject and another, as distinguished from pleas of the crown.

COMMUNIA PLACITA NON TENENDA IN SCACCARIO. An ancient writ directed to the treasurer and barons of the exchequer, forbidding them to hold pleas between common persons *(i. e.,* not debtors to the king, who alone originally sued and were sued there) in that court, where neither of the parties belonged to the same. Reg. Orig. 187.

COMMUNLE. In feudal law on' the continent of Europe, this name was given to towns enfran-

chised by the crown, about the twelfth century, and formed into free corporations by grants called "charters of community."

COMMUNIBUS ANNIS. In ordinary years; on the annual average.

COMMUNICATE. To bestow, convey, make known, recount, impart; to give by way of information. Whitford v. North State Life Ins. Co., 163 N.C. 223, 79 S.E. 501, 502, Ann.Cas.1915B, 270; Prevost v. Morgenthau, 106 F.2d 330, 334, 70 App. D.C. 306.

COMMUNICATION. Information given, the sharing of knowledge by one with another; conference; consultation or bargaining preparatory to making a contract. Intercourse; connection. Also, the Masonic equivalent for the word "meeting." State v. Goodwyn, 83 W.Va. 255, 98 S.E. 577.

Something said by one person to another ;-so used in a statute providing that neither a party nor his or her spouse shall be examined as a witness as to personal transactions or communications between witness and persons since deceased. Secor v. Slyer, 188 Iowa, 1126, 161 N.W. 769, 772, 176 N.W. 981.

"Transactions and communications," within statute declaring inadmissible testimony of interested witness concerning transactions and communications between himself and deceased person, embrace every variety of affairs which conform to the subject of negotiation, interviews, or actions between two persons, and include every method by which one person can derive impressions or information from the conduct, condition or language of another. Bright v. Virginia & Gold Hill Water Co., C.C.A.Nev., 270 F. 410, 413.

The act of communicating;-so used in a statute declaring that no husband or wife shall be compelled to disclose any confidential communication made by one to the other during marriage. Whitford v. North State Life Ins. Co., 163 N.C. 223, 79 S.E. 501, 502, Ann.Cas.1915B, 270. In a broader sense, the word embraces all knowledge upon the part of either obtained by reason of the marriage relations, and which but for the confidence growing out of such relation would not have been known. Prudential Ins. Co. of America v. Pierce's Adm'r, 270 Ky. 216, 109 S.W.2d 616, 617.

As used in a statute providing that an attorney cannot, without the consent of his client, be examined as to any communication made by the client, "communication" is not restricted to mere words but includes acts as well. Ex parte McDonough, 170 Cal. 230, 149 P. 566, 567, L.R.A. 1916C, 593, Ann.Cas.1916E, 327.

French Law

The production of a merchant's books, by delivering them either to a person designated by the court, or to his adversary, to be examined in all their parts, and as shall be deemed necessary to the suit. Arg. Fr. Merc. Law, 552.

-Confidential communications. These are certain classes of communications, passing between persons who stand in a confidential or fiduciary relation to each other, (or who, on account of their relative situation, are under a special duty of secrecy and fidelity,) which the law will not permit to be divulged, or allow them to be inquired into in a court of justice, for the sake of public policy and the good order of society. Examples of such privileged relations are those of husband and wife and attorney and client. Hatton v. Robinson, 14 Pick.Mass. 416, 25 Am.Dec. 415; Parker v. Carter, 4 Munf.Va. 287, 6 Am.Dec. 513; Parkhurst v. Berdell, 110 N.Y. 386, 18 N.E. 123, 6 Am.St.Rep. 384.

-Privileged communication. In the law of evidence. A communication made to a counsel, solicitor, or attorney, in professional confidence, and which he is not permitted to divulge; otherwise called a "confidential communication." 1 Starkie, Ev. 185.

In the law of libel and slander. A defamatory statement made to another in pursuance of a duty, political, judicial, social, or personal, so that an action for libel or slander will not lie, though the statement be false, unless in the last two cases actual malice be proved in addition. Bacon v. Railroad Co., 66 Mich. 166, 33 N.W. 181; 5 E. & B. 347.

When a communication is fairly made by one in the discharge of a public or private duty, legal, moral, or social, of perfect or imperfect obligation, or in the conduct of his own affairs, to one who has a corresponding interest to receive such communication, it is "privileged," International & G. N. Ry. Co. v. Edmundson, Tex.Com.App., 222 S.W. 181, 183, if made in good faith and without actual malice, Baker v. Clark, 186 Ky. 816, 218 S.W. 280, 285. A "privileged communication" is one made in good faith, upon any subject-matter in which the party communicating has an interest, or in reference to which he has, or honestly believes he has, a duty, and which contains matter which, without the occasion upon which it is made, would be defamatory and actionable. Peak v. Taubman, 251 Mo. 390, 158 S. W. 656, 663. In a "privileged communication" the words used, if defamatory and libelous, are excused, while in "fair comment" the words are not a defamation of plaintiff and not libelous. Van Lonkhuyzen v. Daily News Co., 203 Mich. 570, 170 N.W. 93, 99.

Privileged communications are either (1) absolutely privileged, or (2) conditionally or qualifiedly privileged. Grantham v. Wilkes, 135 Miss. 777, 100 So. 673. An "absolutely privileged communication" is one made in the interest of the public service or the due administration of justice, and is practically limited to legislative and judicial proceedings and other actions of state. Grantham v. Wilkes, 135 Miss. 777, 100 So. 673. By an "absolutely privileged" publication is not to be understood a publication for which the publisher is in no wise responsible, but it means a publication in respect of which, by reason of the occasion upon which it is made, no remedy can be had in a civil action for slander or libel, Peterson v. Cleaver, 105 Neb. 438, 181 N.W. 187, 189, 15 A.L.R. 447, even though the words are published maliciously and with knowledge of their falsity, Spencer v. Looney, 116 Va. 767, 82 S.E. 745, 747. A "qualifiedly privileged communication" is a slanderous statement uttered in good faith upon a proper occasion and from a proper motive based upon an honest belief that it is true, but, unlike communications wholly privileged, the defendant has the burden of proving want of malice or ill will. Peak v. Taubman, 251 Mo. 390, 158 S. W. 656, 665. A communication "qualifiedly privileged" is one which is prima facie privileged only, and in which the privilege may be lost by proof of malice in the publication. Spencer v. Looney, 116 Va. 767, 82 S.E. 745, 747. A communication made in good faith upon any subject-matter in which the party communicating has an interest or in reference to which he has a duty, either legal, moral, or social, if made to a person having a corresponding interest or duty, is "qualifiedly privileged." Peterson v. Cleaver, 105 Neb. 438, 181 N.W. 187, 189, 15 A.L.R. 447; Massee v. Williams, C.C.A.Tenn., 207 F. 222, 230; German-American Ins. Co. v. Huntley, 62 Okl. 39, 161 P. 815, 818.

COMMUNINGS. In Scotch law. The negotiations preliminary to entering into a contract.

COMMUNIO BONORUM. In the civil law. A community of goods.

COMMUNION OF GOODS. In Scotch law. The right enjoyed by married persons in the movable goods belonging to them. Bell.

COMMUNIS, COMMUNE, *adj.* Lat. Common.

COMMUNIS ERROR FACIT JUS. Common error makes law. 4 Inst. 240; Noy, Max. p. 37, max. 27. Common error goeth for a law. Finch, Law, b. 1, c. 3, no. 54. Common error sometimes passes current as law. Broom, Max. 139,440.

What was at first illegal is presumed, when repeated many times, to have acquired the force of usage; and then it would be wrong to depart from it. 1 Ld.Raym. 42; 6 Cl. & F. 172; 3 M. & S. 396; Goodman v. Eastman, 4 N.H. 458; Kent v. Kent, 2 Mass. 357; Davey v. Turner, 1 Da11. 13, 1 L.Ed. 15. The converse of this maxim is *communis error non tacit jus.* A common error does not make law. 4 Inst. 242; 3 Term 725; 6 Term 564.

COMIVIUNIS OPINIO. Common opinion; general professional opinion. According to Lord Coke (who places it on the footing of observance or usage), common opinion is good authority in law. Co. Litt. 186a.

COMMUNIS PARIES. In the civil law. A common or party wall. Dig. 8, 2, 8, 13.

COMMUNIS RIXATRIX. In old English law. A common scold, *(q.* v.) 4 Bl.Comm. 168.

COMMUNIS SCRIPTURA. In old English law. A common writing; a writing common to both parties; a chirograph. Glan. lib. 8, c. 1.

COMMUNIS STIPES. A common stock of descent; a common ancestor.

COMMUNISM. A system of social organization in which goods are- held in common, the opposite of the system of private property; communalism, any theory or system of social organization involving common ownership of agents of production of industry, the latter of which theories is referred to in the popular, use of the word "communism" while the scientific usage sometimes conforms to the first alone and sometimes alternates between the first and second; also the principles and theories of the Communist Party, especially in Soviet Russia. Feinglass v. Reinecke, D.C.Ill., 48 F.Supp. 438, 440. ,

Any theory or system of social organization involving common ownership of the agents of production, and some approach to equality in the distribution of the products of industry. Webster, Diet. A system by which the state controls the means of production and the distribution and consumption of industrial products. Cent.Dict.

An equality of distribution of the physical means of life and enjoyment as a transition to a still higher standard of justice that all should work according to their capacity and receive according to their wants. 1 Mill, Pol.Ec. 248.

COMMUNIST. A supporter of the Paris Commune; in 1871 Communard; , a member of the Communist Party in any country, especially Soviet Russia; one who belives in communism. Feinglass v. Reinecke, D.C.I11., 48 F.Supp. 438, 440, 441.

Communist International. See Third International.

COMMUNIST PARTY. A semipolitical party of recent t years representing the Socialist radical wing and holding of the tenets and beliefs of Communism. It has quite generally seceded from the Socialists, organizing in many countries but chiefly in Russia. Garriga v. Richfield, 20 N.Y.S. 2d 544, 547, 174 Misc. 315.

COMMUNITAS REGNI ANGLIZE. The general assembly of the kingdom of England. One of the ancient names of the English parliament. 1 Bl. Comm. 148. See, also, Commune Concilium Regni.

COMMUNITY. Neighborhood; vicinity, synonymous with locality. Conley v. Valley Motor Transit Co., C.C.A.Ohio, 139 F.2d 692, 693. People who reside in a locality in more or less proximity. State ex inf. Thompson ex rel. Kenneppe v. Scott, 304 Mo. 664, 264 S.W. 369, 370. A society or body of people living in the same place, under the same laws and regulations, who have common rights, privileges, or interests. In re Huss, 126 N.Y. 537, 27 N.E. 784, 12 L.R.A. 620; Sacred Heart Academy of Galveston v. Karsch, 122 S.W.2d 416, 417, 173 Tenn. 618.

It connotes a congeries of common interests arising from associations—social, business, religious, governmental, scholastic, recreational. Lukens Steel Co. v. Perkins, 107 F.2d 627, 631, 70 App.D.C. 354.

The term "community," as used in a statute proNlding that communities may be incorporated for the purpose of supplying inhabitants with water, should be construed to include all the inhabitants of a district having a community of interest in obtaining for themselves in common a water supply for domestic use. Hamilton v. Rudeen, 112 Or. 268, 224 P. 92, 93.

In connection with the rule requiring, for purposes of impeachment, a knowledge of the character of the witness in the community or neighborhood in which he resides, the term "community" means, generally, where the person is well known and has established a reputation. Craven v. State, 22 Ala.App. 39, 111 So. 767, 769.

### Civil Law

A corporation or body politic. Dig. 3, 4.

### French Law

A species of partnership which a man and a woman contract when they are lawfully married to each other. See, also, Community Property, *infra.*

*Conventional community* is that which is formed by express agreement in the contract of marriage.

By this contract the legal community which would otherwise subsist may be modified as to the proportions which each shall take, and as to the things which shall compose it.

*Legal community* is that which takes place by virtue of the contract of marriage itself.

The French system of community property was known as the dotal system, and the Spanish as the ganancial system. The conquest of Mexico by the Spaniards and their acquisition of the Florida territory resulted in the introduction on American soil of the Spanish system, which now prevails, usually in a somewhat modified form, in Texas, California, Nevada, Arizona, Washington, Idaho, New Mexico, Porto Rico, and the Philippines. Ballinger, Com.Property, § 6; Chavez v. McKnight, 1 N.M. 147. The Louisiana Code has, with slight modifications, adopted the dotal system of the Code Nepoleon as regards the separate rights of husband and wife, but as to their common property, it retained the essential features of the Spanish ganancial system.

COMMUNITY ACCOUNT. A bank account consisting of separate and community funds commingled in such manner that neither can be distinguished from the other. Smith V. Buss, 135 Tex. 566, 144 S.W.2d 529, 532.

CO3DIUNITY DEBT. One chargeable to the cornmunity (of husband and wife) rather than to either of the parties individually. Calhoun v. Leary, 6 Wash. 17, 32 P. 1070.

COMMUNITY HOUSE. A house occupied by two or more families. Fox v. Sumerson, 338 Pa. 545, 13 A.2d 1, 2.

COMMUNITY OF INTEREST. Term as applied to relation of joint adventure means interest common to both or all parties, that is, mixture or identity of interest in venture wherein each and all are .reciprocally concerned and from which each and all derive material benefit and sustain a mutual responsibility. Carboneau v. Peterson, 1 Wash.2d 347, 95 P.2d 1043, 1055.

COMMUNITY OF PROFITS. This term, as used in the definition of a partnership, (to which a community of profits is essential,) means a proprietorship in them as distinguished from a personal claim upon the other associate, a property right in them from the start in one associate as much as in the other. Moore v. Williams, 26 Tex.Civ. App. 142, 62 S.W. 977.

COMMUNITY PROPERTY. Property owned in common by a husband and wife as a kind of marital partnership. Coleman v. Coleman, Tex.Civ. App., 293 S.W. 695, 699. Property acquired by husband and wife, or either, during marriage, when not acquired as the separate property of either. In re Lux's Estate, 114 Cal. 73, 45 P. 1023; Mitchell v. Mitchell, 80 Tex. 101, 15 S.W. 705; Ames v. Hubby, 49 Tex. 705; Holyoke v. Jackson, 3 Wash.T. 235, 3 P. 841; Civ. Code Cal. § 687.

This partnership or community consists of the profits of all the effects of which the husband has the administration and enjoyment, either of right or in fact, of the produce of the reciprocal industry and labor of both husband and wife, and of the estates which they may acquire during the marriage, either by donations made jointly to them both, or by purchase, or in any other similar way, even although the purchase be only in the name of one of the two, and not of both, because in that case the period of time when the purchase is made is alone attended to, and not the person who made the purchase. Rev.Civ.Code La. arts. 2402, 2404; Brown v. Cobb, 10 La. 172; Barnes v. Thompson, 154 La. 1036, 98 So. 657, 658.

COMMUTATION. Alteration; change; substitution; the act of substituting one thing for another. Steinacher v. Swanson, 131 Neb. 439, 268 N.W. 317,. 321.

Criminal Law

The change of a punishment from a greater to a less; as from hanging to imprisonment. People v. Jenkins, 325 Ill. 372, 156 N.E. 290, 292. Fehl v. Martin, 155 Or. 455, 64 P.2d 631, 632.

Although both a pardon and a commutation are granted by the sovereign power; Goben v. State, 32 Okl,Cr. 237, 240 P. 1085, 1087; a "commutation" means merely a change of punishment, while a "pardon" avoids or terminates punishment for crime; Lupo v. Zerbest, C.C.A.Ga., 92 F.2d 362, 364. A pardon bears no relation to the term of punishment, and must be accepted or it is nugatory ; commutation removes no stain, restores no civil privilege, and maybe effected without the consent and against the will of the prisoner. In re Charles, 115 Kan. 323, 222 P. 606, 608; Chapman v. Scott, D.C.Conn., 10 F.2d 156, 159.

"Commutation" is also distinguishable from a "reprieve" or "respite," meaning simply the withholding of a sentence for an interval of time, a postponement of execution, or a temporary suspension of execution. State v. District Court of Eighteenth Judicial Dist. in and for Maine County, 73 Mont. 541, 237 P. 525, 527.

Civil Law

The conversion of the right to receive a variable or periodical payment into the right to receive a fixed or gross payment; a substitution of one sort of payment for another, or of money payment in lieu of a performance of a compulsory duty or labor. Commutation may be effected by private agreement, but it is usually done under a statute. Steinacher v. Swanson, 131 Neb. 439, 268 N.W. 317, 321.

COMMUTATION OF TAXES. Payment of a designated lump sum (permanent or annual) for the privilege of exemption from taxes, or the settlement in advance of a specific sum in lieu of an ad valorem tax. Cotton Mfg. Co. v. New Orleans, 31 La.Arrn. 440.

COMMUTATION OF TITHES. Signifies the conversion of tithes into a fixed payment in money.

COMMUTATION TICKET. A railroad ticket giving the holder the right to travel at a certain rate for a limited number of trips (or for an unlimited number within a certain period of time) for a less amount than would be paid in the aggregate for so many separate trips. Interstate Commerce Com'n v. Baltimore & 0. R. Co., C.C.Ohio, 43 F. 56.

COMMUTATIVE CONTRACT. In civil law. One in which each of the contracting parties gives and receives an equivalent; *e. g.,* the contract of sale. Pothier, Obl. n. 13; State ex rel. Waterman v. J. S. Waterman and Co., 178 La. 340, 151 So. 422, 426. See Contract.

COMMUTATIVE JUSTICE, See Justice.

COMPACT, n. An agreement; a contract. Green v. Biddle, 8 Wheat. 1, 92, 5 L.Ed. 547. Usually applied to conventions between nations or sovereign states.

A contract between parties, which creates obligations and rights capable of being enforced, and contemplated as such between the parties, in their distinct and independent characters. Story, Const. b. 3, c. 3; Rutherf.Inst. b. 2, c. 6, § 1.

A mutual consent of parties concerned respecting some property or right that is the object of the stipulation, or something that is to be done or forborne. Chesapeake & 0. Canal Co. v. Baltimore & 0. R. Co., 4 Gill & J., Md., 1.

COMPACT, *adj.* Closely or firmly united or packed, as the particles of solid bodies; firm; solid; dense; as a compact texture in rocks; also, lying in a narrow compass or arranged so as to economize space; having a small surface or border in proportion to contents or bulk; close; as, a compact estate; a compact'order or formation of troops. Wails v. Board of Commissioners of Okmulgee County, 156 Okl. 165, 9 P.2d 946, 948. Concentrated, or near to. Webster v. Toulon Tp. High School Dist. No. 4, 313 Ill. 541, 145 N.E. 118, 121; State v. Tindell, 210 P. 619, 621, 112 Kan. 256.

COMPACT SCHOOL DISTRICT. One so closely united and so nearly adjacent to the school building that all the students residing in the district may conveniently travel from their homes to the school building and return the same day in a reasonable length of time and with a reasonable degree of comfort. People ex rel. Tudor v. Vance, 29 N.E.2d 673, 675, 374 Iii. 415; People ex rel. Frailey v. McNeely, 32 N.E.2d 608, 610, 376 Ill. 64.

COMPANAGE. All kinds of food, except bread and drink. Spelman.

COMPANIES CLAUSES CONSOLIDATION ACT. An English statute, (8 Vict. c. 16,) passed in 1845, which consolidated the clauses of previous laws still remaining in force on the subject of public companies. It is considered as incorporated into all subsequent acts authorizing the execution of undertakings of a public nature by companies, unless expressly excepted by such later acts. Its purpose is declared by the preamble to be to avoid repeating provisions as to the constitution and management of the companies, and to secure greater uniformity in such provisions. Wharton.

COMPANION OF THE GARTER. One of the knights of the Order of the Garter.

COMPANIONS. In French law. A general term, comprehending all persons who compose the crew of a ship or vessel. Poth. Mar. Cont. no. 163.

COMPANULATE. This term, used to describe the shape of the cover of a lunch-box containing a thermos bottle, means bell-shaped. American Can Co. v. Goldee Mfg. Co., D.C.N.Y., 290 F. 523, 527,

COMPANY. A society or association of persons, in considerable number, interested in a common object, and uniting themselves for the prosecution usually of some commercial or industrial undertaking, or other legitimate business. Mills v. State, 23 Tex. 303; Smith v. Janesville, 52 Wis. 680, 9 N.W. 789.

The proper signification of the word "company," when applied to persons engaged in trade, denotes those united for the same purpose or in a joint concern. It is so commonly used in this sense, or as indicating a partnership, that few persons accustomed to purchase goods at shops, where they are sold by retail, would misapprehend that such was its meaning. Palmer v. Pinkham, 33 Me. 32.

The term is not identical with "partnership," although every unincorporated society is, in its legal relations, a partnership. In common use a distinction is made, the name "partnership" being reserved for business associations of a limited number of persons (usually not more than four or five) trading under a name composed of their individual names set out in succession; while "company" is appropriated as the designation of a society comprising a larger number of persons, with greater capital, and engaged in more extensive enterprises, and trading under a title not disclosing the names of the individuals. Attorney General v. Mercantile Marine Ins. Co., 121 Mass. 525.

Sometimes the word is used to represent those members of a partnership whose names do not appear in the name of the firm. See 12 Toullier, 97.

A number of persons united for performing or carrying on anything jointly. In re Tidewater Coal Exchange, C.C.A.N.Y., 280 F. 638, 643.

Thus, the term is not necessarily limited to a trading or commercial body, but may include an unincorporated I organization to promote fraternity among its members and provide mutual aid and protection through the payment of death benefits. In re Order of Sparta, D.C.Pa., 238 F. 437.

"Company" is a generic and comprehensive word, which may include individuals, partnerships, and corporations. Asbury v. Town of Albemarle, 162 N.C. 247, 78 S.E. 146, 148, 44 L.R.A.,N.S., 1189; Ellerson v. Grove, C.C.A.N.C., 44 F.2d 493, 497. But not a municipality. City of Los Angeles, Cal., v. Eighth Judicial District Court, 58 Nev. 1, 67 P.2d 1019, 1023.

The word is sometimes applicable to a single individual. Harger v. Harger, 144 Ark. 375, 222 S.W. 736, 739. But compare Wood v. Wood, 78 Or. 181, 151 P. 969, 970, L.R.A. 1916C, 251, Ann.Cas.1918A, 226.

### Joint Stock Company

An association of individuals for purposes of profit, possessing a common capital contributed by the members composing it, such capital being commonly divided into shares of which each member possesses one or more, and which are transferable by the owner. Shelf. Jt. St. Co. 1. One having a joint stock or capital, which is divided into numerous transferable shares, or consists of transferable stock. Lindl. Partn. 6. A partnership whereof the capital is divided, or agreed to be divided, into shares so as to be transferable without the express consent of the co-partners. Pars. Part. § 435. A *quasi* partnership, invested by statutes in England and many of the states with some of the privileges of a corporation. See Pennsylvania v. Mining Co., 10 Wall. 556, 19 L. Ed. 998; L.R. 4 Eq. 695. It lies midway between a corporation and a copartnership. Rocky Mountain Stud Farm Co. v. Lunt, 46 Utah, 299, 151 P. 521, 527.

A "joint-stock company" is an entirely different organization from a "corporation," although it has many of the same characteristics and is often not improperly called a quasi corporation, especially under particular statutes, but in Kentucky it is still what it was at common law, namely, a hybrid midway between a corporation and a partnership, that is, it had directors and officers, articles of association, a common capital divided into shares which represented the interests of the members and are transferable without the consent of the other members so that the death of a member does not dissolve the company—but, on the other hand, each member was liable for the debts of the concern, so that such company had characteristics of both a corporation and a partnership. Roller v. Madison, 172 Ky. 693, 189 S. W. 914, 915.

### 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. Partn. 383; Mozley & Whitley.

### Public Company

In English law. A business corporation; a society of persons joined together for carrying on some commercial or industrial undertaking.

COMPARABLE ACCOMMODATION. Within the rule that it is the rent generally prevailing on the freeze date for comparable accommodations in a

defense-rental area that determines rent that may be charged, two accommodations are "comparable" if they are sufficiently similar to be regarded by an expert as of substantially equal rental value or if they are sufficiently similar so that an expert taking as a standard the rent prevailing for one and making allowances for such differences as would be reflected in rental value would be able to determine the appropriate corresponding rent for the other. Sirianni v. Bowles, Em.App., 148 F.2d 343, 344.

COMPARATIO LITERARUM. In the civil law. Comparison of writings, or handwritings. A mode of proof allowed in certain cases.

COMPARATIVE. Proceeding by the method of comparison; founded on comparison; estimated by comparison.

COMPARATIVE INTERPRETATION. That method of interpretation which seeks to arrive at the meaning of a statute or other writing by comparing its several parts and also by comparing it as a whole with other like documents proceeding from the same source and referring to the same general subject. Glenn v. York County, 6 Rich. (S.C.) 412.

COMPARATIVE JURISPRUDENCE. The study of the principles of legal science by the comparison of various systems of law.

COMPARATIVE NEGLIGENCE. That doctrine in the law of negligence by which the negligence of the parties is compared, in the degrees of "slight," "ordinary," and "gross" negligence, and a recovery permitted, notwithstanding the contributory negligence of the plaintiff, when the negligence of the plaintiff is slight and the negligence of the defendant gross, but refused when the plaintiff has been guilty of a want of ordinary care, thereby contributing to his injury, or when the negligence of the defendant is not gross, but only ordinary or slight, when compared, under the circumstances of the case, with the contributory negligence of the plaintiff. 3 Amer. & Eng. Enc. Law, 367. St. Louis & S. F. R. Co. v. Elsing, 37 Okl. 333, 132 P. 483, 486.

Where negligence by both parties is concurrent and contributes to injury, recovery is not barred under such doctrine, but plaintiff's damages are diminished proportionately, provided his fault is less than defendant's, and that, by exercise of ordinary care, he could not have avoided consequences of defendant's negligence after it was or should have been apparent. Rogers v. McKinley, 48 Ga.App. 262, 172 S.E. 662, 664.

COMPARISON OF HANDWRITING. A comparison by the juxtaposition of two writings, in order, by such comparison, to ascertain whether both were written by the same person.

A method of proof resorted to where the genuineness of a written document is disputed; it consists in comparing the handwriting of the disputed paper with that of another instrument which is proved or admitted to be in the writing of the party sought to be charged, in order to infer, from their identity or similarity in this respect, that they are the work of the same hand. Johnson v. Insurance Co., 105 Iowa, 273, 75 N.W. 101,

COMPARATIVE RECTITUDE. Doctrine wherein relief by divorce is granted to the party least in fault when both have shown grounds for divorce. Blankenship v. Blankenship, 51 Nev. 356, 276 P. 9, 10, 63 A.L.R. 1127.

Doctrine does not apply in Nevada.

COMPASCUUM. Belonging to commonage *Jus conipascuum,* the right of common of pasture.

COMPASS, THE MARINER'S. An instrument used by mariners to point out the course of a ship at sea. It consists of a magnetized steel bar called the "needle," attached to the under side of a card, upon which are drawn the points of the compass, and supported by a fine pin, upon which it turns freely in a horizontal plane.

COMPASSING. Imagining or contriving, or plotting. In English law, "compassing the king's death" is treason. 4 Bl.Comm. 76.

COMPATERNITAS. In the canon law. A kind of spiritual relationship contracted by baptism.

COMPATERNITY. Spiritual affinity, contracted by sponsorship in baptism.

COMPATIBILITY. As applied to offices, such relation and consistency between the duties of two offices that they may be held and filled by one person.

COMPEAR. In Scotch law. To appear.

COMPEARANCE. In Scotch practice. Appearance; an appearance made for a defendant; an appearance by counsel. Bell.

COMPEL. To force. Temple Lumber Co. v. Living, Tex.Civ.App., 289 S.W. 746, 749. To oblige. Texas Electric Ry. v. Jones, Tex.Civ.App., 231 S. W. 823, 824.

In an allegation that plaintiff was compelled to pay license taxes, the word "compel" does not necessarily import elements of compulsory payment. Singer Sewing Mach. Co. v. Teasley, 198 Ala. 673, 73 So. 969, 971; Sinnott v. District Court in and for Clarke County, 201 Iowa, 292, 207 N.W. 129, 131.

As to compelling a person to testify against himself, see State v. Backstrom, 117 Kan. 111, 230 P. 306, 308: U. S. v. Cooper, D.C.Iowa, 288 F. 604, 609; U. S. v. Kailas, D.C. Wash., 272 F. 742, 751; U. S. v. Monia, Ill., 317 U.S. 424, 63 S.Ct. 409, 411, 87 L. Ed. 376.

COMPELLATIVUS. An adversary or accuser.

Compendia sunt dispendia. Co. Litt. 305. Abbreviations (or abridgments) are detriments.

COMPENDIUM. An abridgment, synopsis, or digest.

COMPENSABLE DEATH, Within Workmen's Compensation Acts is one which results to employee from injury by accident arising out of and in course of employment. Slade v. Willis Hosiery Mills, 209 N.C. 823, 184 S.E. 844, 845.

COMPENSABLE INJURY. Within Workmen's Compensation Acts is an injury for which compensation is payable, and date of such an injury is not time of the accident or occurrence causing

injury, but the time when the right to compensation accrues. S. G. Taylor Chain Co. v. Marianowski, 182 N.E. 584, 585, 95 Ind.App. 120. Muehlhausen Spring Co. v. Szewczyk, 104 Ind.App. 161, 8 N.E.2d 104, 106.

COMPENSACION. In Spanish law. Compensation; set-off. The extinction of a debt by another debt of equal dignity between persons who have mutual claims on each other.

COMPENSATIO. Lat. In the civil law. Compensation, or set-off. A proceeding resembling a set-off in the common law, being a claim on the part of the defendant to have an amount due to him from the plaintiff deducted from his demand. Dig. 16, 2; Inst. 4, 6, 30, 39; 3 Bl.Comm. 305.

COMPENSATIO CRIMINIS. (Set-off of crime or guilt.) In practice. The compensation or set-off of one crime against another; the plea of recrimination in a suit for a divorce; that is, that the complainant is guilty of the same kind of offense with which the respondent is charged. See 1 Hagg.Cons. 144; 1 Hagg.Eccl. 714; Wood v. Wood, 2 Paige, Ch. (N.Y.) 108, 2 D. & B. 64; Bishop, Marr. & D. §§ 393, 394.

COMPENSATION. Indemnification; payment of damages; making amends; making whole; giving an equivalent or substitute of equal value; that which is necessary to restore an injured party to his former position; consideration or price of a privilege purchased; equivalent in money for a loss sustained; equivalent given for property taken or for an injury done to another; giving back an equivalent in either money which is but the measure of value, or in actual value otherwise conferred; recompense in value; recompense or reward for some loss, injury, or service, especially when it is given by statute; remuneration for the injury directly and proximately caused by a breach of contract or duty; remuneration or satisfaction for injury or damage of every description; that return which is given for something else. An act which a court orders to be done, or money which a court or other tribunal orders to be paid, by a person whose acts or omissions have caused loss or injury to another, in order that thereby the person damnified may receive equal value for his loss, or be made whole in respect of his injury. Railroad Co. v. Denman, 10 Minn. 280 (Gil. 208) ; Hughson Condensed Milk Co. v. State Board of Equalization, 23 Cal.App.2d 281, 73 P.2d 290, 292. For "Extra Compensation" and "Fair and Reasonable Compensation", see these titles.

"Compensation" is a misleading term, and is used merely for lack of a word more nearly expressing the thought of the law which permits recovery for an imponderable and intangible thing for which there is no money equivalent. Stutsman v. Des Moines City Ry. Co., 180 Iowa, 524, 163 N.W. 580, 585.

The word "compensation," as used in Workmen's Compensation Acts, means the money relief afforded an injured employee or his dependents according to the scale established and for the persons designated in the act, and not the compensatory damages recoverable in an action at law for a wrong done or a contract broken. Christensen v. Morse Dry Dock & Repair Co., 214 N.Y.S. 732, 740, 216 App. Div. 274.

As used in Workmen's Compensation Acts, "compensation" is distinguishable from "benefits" ; the former applying to an allowance where the employee is only injured, and the latter applying in case of death. Terry v. General Electric Co., 232 N.Y. 120, 133 N.E. 373, 374. The term "compensation" may include ftlneral benefits. Donoho v. Atlantic Basin Iron Works, 206 N.Y.S. 494, 495, 210 App. Div. 535. But see Barber v. Estey Organ Co., 100 Vt. 72, 135 A. 1, 2; Industrial Commission v. Hammond, 77 Colo. 414, 236 P. 1006, 1008.

Also that equivalent in money which is paid to the owners and occupiers of lands taken or injuriously affected by the exercise of the power of eminent domain. Louisiana and F. Plank Road Co. v. Pickett, 25 Mo. 535, 539; Oregon Short Line R. Co. v. Fox, 28 Utah 311, 78 P. 800, 801.

In the constitutional provision for "just compensation" for property taken under the power of eminent domain, this term means a payment in money. Any benefit to the remaining property of the owner, arising from public works for which a part has *been* taken, cannot be considered as compensation. Railroad Co. v. Burkett, 42 Ala. 83.

As compared with consideration and damages, compensation, in its most careful use, seems to be between them. Consideration is amends for something given by consent, or by the owner's choice. Damages is amends exacted from a wrong-doer for a tort. Compensation is amends for something which *was* taken without the owner's choice, yet without commission of a tort. Thus, one should say, consideration for land sold; compensation for land taken for a railway; damages for a trespass. But such distinctions are not uniform. Land damages is a common expression for compensation for lands taken for public use. Abbott.

"Compensation" is distinguishable from "damages," inasmuch *as* the former may mean the sum which will remunerate an owner for land actually taken, while the latter signifies an allowance made for injury to the residue: but such distinction is not ordinarily observed. Faulkner v. City of Nashville, 154 Tenn. 145, 285 S.W. 39, 43.

The remuneration or wages given to an employee or, especially, to an officer. Salary, pay, or emolument. Christopherson v. Reeves, 44 S.D. 634, 184 N.W. 1015, 1019; Higgins v. Glenn, 65 Utah, 406, 237 P. 513, 515.

The ordinary meaning of the term "compensation," as applied to officers, is remuneration, in whatever form it may be given, whether it be salaries and fees, or both combined. State v. Bland, 91 Kan. 160, 136 P. 947, 949. It is broad enough to include other remuneration for official services; State ex rel. Emmons v. Farmer, 271 Mo. 306, 196 S. W. 1106, 1108; such as mileage or traveling expenses ; Leckenby v. Post Printing & Publishing Co., 65 Colo. 443, 176 P. 490, 492; and also the repayment of amounts expended. Compare, however, People v. Chapman, 225 N.Y. 700, 122 N.E. 240; McCoy v. Handlin, 35 S.D. 487, 153 N.W. 361, 371, L.R.A.1915E, 858, Ann.Cas.1917A, 1046.

But the term is not necessarily synonymous with "salary." See People v. Wemple, 115 N.Y. 302, 22 N.E. 272; Com. v. Carter, 21 Ky.L.Rep. 1509, 55 S.W. 701; Crawford County v. Lindsay, 11 Il1.App. 261; Kilgore v. People, 76 Ill. 548.

A "reasonable compensation" *is* that which will fairly compensate the laborer when the character of the work and the effectiveness and ability entering into the service are considered. Chapman v. A. H. Averill Machinery Co., 28 Idaho, 121, 152 P. 573, 575.

Compensation is not synonymous with "pension," which is ordinarily a gratuity from the government or some of its subordinate agencies in recognition of, but not in payment for, past services. Dickey v. Jackson, 181 Iowa 1155, 165 N.W. 387, 389.

### The Civil, Scotch, and French Law

Recoupment; set-off. The meeting of two debts due by two parties, where the debtor in the one debt is the creditor in the other; that is to say, where one person is both debtor and creditor to

another, and therefore, to the extent of what is due to him, claims allowance out of the sum that he is due. Bell; 1 Kames, Eq. 395, 396.

In order for "compensation" to take place, the two debts must exist simultaneously and have as their object the payment of a sum of money or a certain quantity of consumable things of one and the same kind, and the debts must be equally liquidated and demandable. Blanchard v. Bank of Morgan City & Trust Co., La.App., 185 So. 120, 122.

Compensation is of three kinds,-legal, or by operation of law; compensation by way of exception; and by reconvention. Stewart v. Harper, 16 La.Ann. 181; Blanchard v. Cole, 8 La. 158; 8 Dig. 16, 2; Code, 4, 31; Inst. 4, 6, 30; Burge, Suret. b. 2, c. 6, p. 181; La.Civ. Code, arts. 2203-2208 (Civ.Code, arts. 2207-2211).

Criminal Law

Recrimination. See Compensatio Criminis; Recrimination.

"Commutation" and "compensation" in statutes providing for reduction of sentence for good behavior are used interchangeably. Ryan v. Lawes, 278 N.Y.S. 608, 154 Misc. 572.

COMPENSATION PERIOD. The period fixed by the Workmen's Compensation Act during which the injured party is to receive compensation, unless the board reduces the period by correspondingly increasing the amount of weekly compensation. Southern Casualty Co. v. Boykin, Tex.Civ. App., 298 S.W. 639, 640.

COMPENSATORY DAMAGES. See Damages.

COMPERENDINATIO. In the Roman law. The adjournment of a cause, in order to hear the parties or their advocates a second time; a second hearing of the parties to a cause. Calvin.

COMPERTORIUM. In the civil law. A judicial inquest made by delegates or commissioners to find out and relate the truth of a cause. Wharton.

COMPERUIT AD DIEM. A plea in bar of an action of debt on a bail bond that the defendant appeared at the day required. For forms, see 5 Wentworth 470; Lilly, Entr. 114; 2 Chit. Pl. 527. See, generally, Comyns, Dig. *Pleader* (2 W. 31); 7 B. & C. 478.

COMPETE. To contend emulously, to strive for the position for which another is striving, to contend in rivalry. People v. Chew, 67 Colo. 394, 179 P. 812, 813; Commonwealth v. Shenandoah River Light & Power Corporation, 135 Va. 47, 115 S.E. 695, 698. See Competition.

COMPETENCY. In the law of evidence. The presence of those characteristics, or the absence of those disabilities, which render a witness legally fit and qualified to give testimony in a court of justice;-applied, in the same sense, to documents or other written evidence.

Competency differs from credibility. The former is a question which arises before considering the evidence given by the witness; the latter concerns the degree of credit to be given to his story. The former denotes the personal qualification of the witness; the latter his veracity. A witness may be competent, and yet give incredible testimony; he may be incompetent, and yet his evidence, if received, be perfectly credible. Competency is for the court; credibility for the *jury*. Yet in some cases the term "credible" is used as an equivalent for "competent." Thus, in a statute relating to the execution of wills, the term "credible witness" is held"to mean one who is entitled to be examined and to give evidence in a court of justice; not necessarily one who is personally worthy of belief, but one who is not disqualified by imbecility, interest, crime, or other cause. 1 Jarm.Wills, 124; Smith v. Jones, 68 Vt. 132, 34 A. 424; Corn. v. Holmes, 127 Mass. 424, 34 Am.Rep. 391.

In French law. The right in a court to exercise jurisdiction in a particular case.

COMPETENT. Duly qualified; answering all requirements; having sufficient ability or authority; possessing the requisite natural or legal qualifications; able; adequate; suitable; sufficient; capable; legally fit. Levee Dist. v. Jamison, 176 Mo. 557, 75 S.W. 679; In re Fichter's Estate, 279 N.Y. S. 597, 600, 155 Misc. 399. See, also, Incompetency.

A testator may be said to be "competent," if he has mental capacity to understand the nature of his act, to understand and recollect the nature and situation of his property and his relations to persons having claims on his bounty and whose interests are affected by his will. In re Smith's Estate, 200 Cal. 152, 252 P. 325, 328.

When generally applied to arbitrators, the term does not mean "expert." Home Ins. Co. v. Walter, Tex.Civ.App., 230 S.W. 723, 724.

COMPETENT AND OMITTED. In Scotch practice. A term applied to a plea which might have been urged by a party during the dependence of a cause, but which had been omitted. Bell.

COMPETENT AUTHORITY. As applied to courts and public officers, this term imports jurisdiction and due legal authority to deal with the particular matter in question. Mitchel v. U. S., 9 Pet. 735, 9 L.Ed. 283; Charles v. Charles, 41 Minn. 201, 42 N.W. 935.

COMPETENT EVIDENCE. That which the very nature of the thing to be proven requires, as, the production of a writing where its contents are the subject of inquiry. 1 Greenl.Ev. § 2; Hill V. Hill, 216 Ala. 435, 113 So. 306, 308; Goltra v. Penland, 45 Or. 254, 77 P. 129, 133. Also, generally, admissible or relevant, as the opposite of "incompetent." Ryan v. Town of Bristol, 63 Conn. 261, 27 A. 309, 312.

COMPETENT COURT. A court, either civil or criminal, having lawful jurisdiction. People ex rel. Fisher v. Morhous, 49 N.Y.S.2d 110, 116, 183 Misc. 51.

COMPETENT WITNESS. One who is legally qualified to be heard to testify in a cause. People v. Compton, 123 Cal. 403, 56 P. 44; Bank of Uvalde, Tex.Civ.App., 60 S.W.2d 888, 889. See Competency.

As used in the statute relating to the execution of wills, the term means a person who, at the time of making the attestation, could legally testify in court to the facts which he attests by subscribing his name to the will. In re Wiese's Estate, 98 Neb. 463, 153 N.W. 556, L.R.A.1915E, 832.

COMPETITION. Rivalry. People ex rel. Broderick v. Goldfogle, 123 Misc. 399, 205 N.Y.S. 870, 877. The play of contending forces ordinarily engendered by an honest desire for gain. U. S. v. American Linseed Oil Co., 43 S.Ct. 607, 611, 262 U.S. 371, 67 L.Ed. 1035. The effort of two or more parties,

acting independently, to secure the custom of a third party by the offer of the most favorable terms. It is the struggle between rivals for the same trade at the same time; the act of seeking or endeavoring to gain what another is endeavoring to gain at the same time. Lipson v. Socony Vacuum Corporation, C.C.A.Mass., 87 F.2d 265, 270.

As used in a statute taxing moneyed capital competing with national banks, "competition" means a condition of business rivalry which arises when moneyed capital is devoted with reasonable continuity and regularity to operations having for their primary and characteristic purpose, as distinguished from some incidental operations or details, the transaction of some branch of business which may be carried on by national banks, and it is not necessary that *this* employment shall bring capital into competition with all of such branches. People ex rel. Pratt v. Goldfogle, 242 N.Y. 277, 151 N.E. 452, 461. The term involves the idea of struggling to obtain the same thing. First Nat. Bank v. City of Hartford, 187 Wis. 290, 203 N.W. 721, 729. See, also, First Nat. Bank v. City of Hartford, 47 S.Ct. 462, 466, 273 U.S. 548, 71 L. Ed. 767, 59 A.L.R. 1.

Unity of object with diversity of method *Is* the essence of competition. Continental Securities Co. v. Interborough Rapid Transit Co., D.C.N.Y., 207 F. 467, 470.

Scotch Practice

The contest among creditors claiming on their respective diligences, or creditors claiming on their securities. Bell.

Unfair Competition in Trade

See Unfair.

COMPETITIVE CIVIL SERVICE EXAMINA• TION. Examination which conforms to measures or standards which are sufficiently objective to be capable of being challenged and reviewed by other examiners of equal ability and experience. Fink v. Finegan, 270 N.Y. 356, 1 N.E.2d 462, 464.

COMPETITIVE BIDDING. Requires that all bidders be placed on a plane of equality, and that *they* bid upon the same terms and conditions. State Highway Commission of Kentucky v. King, 259 Ky. 414, 82 S.W.2d 443.

COMPETITIVE TRAFFIC. Traffic which, as to any one carrier, originates at a point served also by another carrier, which other carrier handles the traffic at equal line-haul rates from origin to destination. Northern Pac. Ry. Co. v. United States, D.C.Minn., 41 F.Supp. 439, 441.

COMPETITORS. Persons endeavoring to do the same thing and each offering to perform the act, furnish the merchandise, or render the service better or cheaper than his rival. Continental Securities Co. v. Interborough Rapid Transit Co., D.C. N.Y., 207 F. 467, 470.

COMPILATION. A literary production composed of the works of others and arranged in a methodical manner.

A compilation consists of selected extracts from different authors; an abridgment is a condensation of the views of one author. Story v. Holcombe, 4 McLean 306, 314, Fed. Cas.No.13,497.

COMPILE. To copy from various authors into one work. Story v. Holcombe, 23 Fed.Cas. 171, 174. See Compilation,

Such a collection of statutes differs from a code in this, that none of the laws so compiled derives any new force or undergoes any modification in its relation to other statutes *in pari materia* from the fact of the compilation, while a code is a re-enactment of the whole body of the positive law and is to be read and interpreted as one entire and homogeneous whole.

COMPILED STATUTES. A collection of the statutes existing and in force in a given state, all laws and parts of laws relating to each subject-matter being brought together under one head, and the whole arranged systematically in one book, either under an alphabetical arrangement or some other plan of classification. Railway Co. v. State, 31 S.E. 531, 104 Ga. 831; Black, Interp. Laws, p. 363; Fidelity and Columbia Trust Co. v. Meek, 294 Ky. 122, 171 S.W.2d 41, 44.

COMPLAINANT. In practice. One who applies to the courts for legal redress; one who exhibits a bill of complaint. This is the proper designation of one suing in equity, though "plaintiff" is often, used in equity proceedings as well as at law. Benefit Ass'n v. Robinson, 147 Ill. 138, 35 N.E. 168.

One who instigates prosecution or who prefers accusation against suspected person. State v. Snyder, 93 N.J.L, 18, 107 A. 167, 168.

COMPLAINT. In civil practice. In those states having a Code of Civil Procedure, the complaint is the first or initiatory pleading on the part of the plaintiff in a civil action. It corresponds to the declaration in the common-law practice. Code N.Y. § 141; McMath v. Parsons, 26 Minn. 246, 2 N.W. 703. Its purpose is to give defendant information of all material facts on which plaintiff relies to support his demand. Fox v. Cosgriff, 64 Idaho 448, 133 P.2d 930, 932,

The complaint shall contain : (1) The title of the cause, specifying the name of the court in which the action is brought, the name of the county in which the trial is required to be had, and the names of the parties to the action, plaintiff and defendant. (2) A plain and concise statement of the facts constituting a cause of action, without unnecessary repetition; and each material allegation shall be distinctly numbered. (3) A demand of the relief to which the plaintiff supposes himself entitled. If the recovery of money be demanded, the amount thereof must be stated. Code N.C.1883, § 233 (C.S. § 506).

*Cross-complaint.* In code practice. Whenever the defendant seeks affirmative relief against any party, relating to or depending upon the contract or transaction upon which the action is brought, or affecting the property to which the action relates, he may, in addition to his answer, file at the same time, or by permission of the court subsequently, a cross-complaint.' The cross-complaint must be served upon the parties affected thereby, and such parties may demur or answer thereto as to the original complaint. Standley v. Insurance Co., 95 Ind. 254; Harrison v. McCormick, 69 Cal. 616, 11 P. 456; Bank v. Ridpath, 29 Wash. 687, 70 P. 139. This is allowed when a defendant has a cause of action against a co-defendant, or a person not a party to the action, and affecting the subject-matter of the action. The only real difference between a complaint and a cross-complaint is that the first is filed by the plaintiff and the second by the defendant. Both contain a statement of the facts, and each demands affirmative relief upon the facts stated. The difference between a counter-claim and a cross-complaint is that in the former the defendant's cause of action is against the plaintiff; and the latter, against a co-defendant, or one not a party to the action; White v. Reagan, 32 Ark. 290.

In criminal law. A charge, preferred before a magistrate having jurisdiction, that a person

named (or an unknown person) has committed a specified offense, with an offer to prove the fact, to the end that a prosecution may be instituted. It is a technical term, descriptive of proceedings before a magistrate. Hobbs v. Hill, 157 Mass. 556, 32 N.E. 862; In some instances "complaint" is interchangeable with "information." State v. Stafford, 26 Idaho, 381, 143 P. 528, 530; State v. Ritzier, 17 Ohio App. 394, 395. And is often used interchangeably with "affidavit." Hebebrand v. State, 129 Ohio St. 574, 196 N.E. 412, 415.

COMPLETE, *v.* To finish; accomplish that which one starts out to do. Ries v. Williams, 190 Ky. 596, 228 S.W. 40, 41.

COMPLETE, *adj.* Full; entire; including every item or element of the thing spoken of, without omissions or deficiencies; as, a "complete" copy, record, schedule, or transcript. Bailey v. Martin, 119 Ind. 103, 21 N.E. 346.

Perfect; consummate; not lacking in any element or particular; as in the case of a "complete legal title" to land, which includes the possession, the right of possession, and the right of property. Dingey v. Paxton, 60 Miss. 1054; Ehle v. Quackenboss, 6 Hill N. Y. 537; Versailles Tp. v. Ulm, 152 Pa.Super. 384, 33 A.2d 265, 267.

COMPLETE AND PERMANENT LOSS OF USE OF RIGHT ARM. Inability to use in any gainful activity. Bell & Zoller Mining Co. v. Industrial Commission, 322 Ill. 395, 153 N.E. 580, 582.

COMPLETE DETERMINATION OF CAUSE. Determination of every issue so as to render decree or judgment res judicata. Consolidated Gas Co. of New York v. Newton, D.C.N.Y., 256 F. 238, 244.

COMPLETE FRACTURE OF ARM. Breaking of only one bone in forearm, insufficient. Columbia Mut. Life Assur. Co. v. Penn, 97 So. 673, 133 Miss. 266.

COMPLETE IN ITSELF. Of a legislative act, covering entire subject; not amendatory. Minier v. Burt County, 95 Neb. 473, 145 N.W. 977, 979.

COMPLETE LOSS OF SIGHT. A destruction of ability to perceive, distinguish, and recognize objects to such extent that what remains will not confer any of benefits of sight or vision to practical and useful extent. Mulcahey v. Brotherhood of Ry. Trainmen, 229 Mo.App. 610, 79 S.W.2d 759, 765.

COMPLETE PAYMENT. On a contract, the final payment. Robinson v. U. S., C.C.A.N.Y., 251 F. 461, 466.

COMPLETED. Finished; nothing substantial remaining to be done; state of a thing that has been created, erected, constructed or done substantially according to contract. Fox & Co. v. Roman Catholic Bishop of the Diocese of Baker City, 107 Or. 557, 215 P. 178, 179; Taylor Bros. v. Gill, 259 P. 236, 238, 126 Okl. 293, 54 A.L.R. 979; Bayou Meto Drainage Dist. of Lonoke County v. Ingram, 165 Ark. 318, 264 S.W. 947, 949.

COMPLETED OIL WELL. A well finished or sunk to the depth necessary to find oil, or to such a depth as, in the absence of oil, precludes a probability of finding it at a further depth. Howard v. Hughes, 294 Mich. 533, 293 N.W. 740, 743.

COMPLETION. The finishing or accomplishing in full of something theretofore begun; substantial performance of what one has agreed to do; state in which no essential element is lacking. Flad v. Murphysboro & S. I. R. Co., C.C.A.Ill., 283 F. 386, 390.

COMPLICATED. Consisting of many parts or particulars not easily severable in thought; hard to understand or explain; involved, intricate, confused. Niemes v. Niemes, 97 Ohio St. 145, 119 N.E. 503, 505.

COMPLICATED FRACTURE. One where flesh and ligaments get between parts of broken bones, causing suppuration and preventing union of such parts. Sang v. City of St. Louis, 262 Mo. 454, 171 S.W. 347, 349.

COMPLICE. One who is united with others in an ill design; an associate; a confederate; an accomplice.

COMPLY. To yield, to accommodate, or to adapt oneself to, to act in accordance with. Dragwa v. Federal Labor Union No. 23070, 41 A.2d 32, 36, 136 N.J.Eq. 172.

COMPOS MENTIS. Sound of mind. Having use and control of one's mental faculties.

COMPOS SUI. Having the use of one's limbs, or the power of bodily motion. *Si fuit ita compos sui quod itinerare potuit de loco in locum,* if he had so far the use of his limbs as to be able to travel from place to place. Bract. fol. 14b.

COMPOSED OF. Formed of; consisting of. Hoskins Mfg. Co. v. General Electric Co., D.C.I11., 212 F. 422, 428.

COMPOSITE WORK. Within Copyright Act means work to which a number of authors have contributed distinguishable parts. Copyright Act of 1909, § 24, 17 U.S.C.A. § 24. Shapiro, Bernstein & Co. v. Bryan, C.C.A.N.Y., 123 F.2d 697, 699.

COMPOSITIO MENSURARUM. The ordinance of measures. The title of an ancient ordinance, not printed, mentioned in the statute 23 Hen. VIII, c. 4; establishing a standard of measures. 1 Bl. Comm. 275.

COMPOSITIO ULNARUM ET PERTICARUM. The statute of ells and perches. The title of an English statute establishing a standard of measures. 1 B1.Comm. 275.

COMPOSITION. An agreement, made upon a sufficient consideration, between an insolvent or embarrassed debtor and his creditors, whereby the latter, for the sake of immediate or sooner payment, agree to accept a dividend less than the whole amount of their claims, to be distributed

*pro rata,* in discharge and satisfaction of the whole. Bank v. McGeoch, 92 Wis. 286, 66 N.W. 606; Pioneer Minerals Corporation v. Larabic Bros. Bankers, 99 Mont. 358, 43 P.2d 884, 886.

"Composition" should be distinguished from. "accord." The latter properly denotes an arrangement between a debtor and a single creditor for a discharge of the obligation by a part payment or on different terms. The former designates an arrangement between a debtor and the whole body of his creditors (or at least a considerable proportion of them) for the liquidation of their claims by the dividend offered.

Ancient Law

Among the Franks, Goths, Burgundians, and other barbarous peoples, this was the name given to a sum of money paid, as satisfaction for a wrong or personal injury, to the person harmed, or to his family if he died, by the aggressor. It was originally made by mutual agreement of the parties, but afterwards established by law, and took the place of private physical vengeance.

COMPOSITION CHIPS. In the metal trade, "composition chips" or "turnings" are chips without aluminum. Ehrlich v. United Smelting & Aluminum Co., 252 Mass. 12, 147 N.E. 20.

COMPOSITION DEED. An agreement embodying the terms of a composition between a debtor and his creditors.

COMPOSITION IN BANKRUPTCY. An arrangement between a bankrupt and his creditors, whereby the amount he can be expected to pay is liquidated, and he is allowed to retain his assets, upon condition of his making the payments agreed upon. Fisher Supply Co. v. Northwestern Gravel Co., 216 Iowa 909, 249 N.W. 664, 666, 667.

The difference between a common-law "composition with creditors" and a "composition in bankruptcy" is that in a composition with creditors the creditors voluntarily release the principal debtor and therefore release co-debtors, while in the case of a bankruptcy composition the discharge is by operation of law and not by act of the creditors who assent to the composition. Barker v. Ackers, 29 Cal.App.2d 162, 84 P.2d 264, 271.

COMPOSITION OF MATTER. In patent law, a substance composed of two or more different substances, without regard to form. A mixture or chemical combination of materials. Jacobs v. Baker, 7 Wall. 295, 19 L.Ed. 200.

COMPOSITION OF TITHES, OR REAL COMPOSITION. This arises in English ecclesiastical law, when an agreement is made between the owner of lands and the incumbent of a benefice, with the consent of the ordinary and the patron, that the lands shall, for the future, be discharged from payment of tithes, by reason of some land or other real recompense given in lieu and satisfaction thereof. 2 Bl.Comm. 28; 3 Steph.Comm. 129.

COMPOTARIUS. In old English law. A party accounting. Fleta, lib. 2, c. 71, § 17.

COMPOUND, v. To compromise; to effect a composition with a creditor; to obtain discharge from a debt by the payment of a smaller sum. Bank v. Malheur County, 45 P. 781, 30 Or. 420, 35 L.R.A. 141. To put together as elements, ingredients, or parts, to form a whole, to combine, to unite; to form or make up as a composite product by combining different elements, ingredients, or parts, as to combine a mediciiie. Depart. ment of Treasury of Indiana v. Ridgely, 211 Ind. 9, 4 N.E.2d 557, 561, 108 A.L.R. 1067.

COMPOUND, n. A combination of two or more elements or things by means of human agency; an artificial or synthetic product. Monticelli Bros. v. U. S., 8 Ct.Cust.App. 21, 24.

COMPOUND INTEREST. Interest upon interest, i. *e.,* when the interest of a sum of money is added to the principal, and then bears interest, which thus becomes a sort of secondary principal. Camp v. Bates, 11 Conn. 487; Woods v. Rankin, 2 Heisk. (Tenn.) 46; U. S. Mortg. Co. v. Sperry, C. C.Ill., 26 F. 730; American Brake Shoe & Foundry Co. v. Interborough Rapid Transit Co., D.C.N.Y., 26 F.Supp. 954, 955.

COMPOUND LARCENY. See Larceny.

COMPOUNDER. In Louisiana. The maker of a composition, generally called the "amicable compounder."

COMPOUNDING A FELONY. The offense committed by a person who, having been directly injured by a felony, agrees with the criminal that he will not prosecute him, on condition of the latter's making reparation, or on receipt of a reward or bribe not to prosecute.

The offense of taking a reward for forbearing to prosecute a felony; as where a party robbed takes his goods again, or other amends, upon an agreement not to prosecute. Rieman v. Morrison, 106 N.E. 215, 217, 264 Ill. 279.

COMPRA Y VENTA. In Spanish law. Purchase and sale.

COMPREMESSO. In Italian. The instrument whereby parties agree to submit to arbitration a dispute between them. The equivalent of "cornpromissum" under the Roman Law, the principles of which have -been carried into the common law and are to be found in agreements of accord and satisfaction and compromise and settlement. Castelli v. Tolibia, 83 N.Y.S.2d 554, 562.

COMPRINT. A surreptitious printing of another book-seller's copy of a work, to make gain thereby, which was contrary to common law, and is illegal. Wharton.

COMPRISE. To comprehend; include; contain; embrace; cover. Hoskins Mfg. Co. v. General Electric Co., D.C.Ill., 212 F. 422, 428.

COMPRIVIGNI. In the civil law. Children by a former marriage, (individually called *"privigni,"* or *"privignce")* considered relatively to each other.

Thus, the son of a husband by a former wife, and the daughter of a wife by a former husband, are the *comprivigni* of each other. Inst. 1, 10, 8.

COMPROMISE. An arrangement arrived at, either in court or out of court, for settling a dispute upon what appears to the parties to be equitable terms, having regard to the uncertainty they are in regarding the facts, or the law and the facts together. Colburn v. Groton, 66 N.H. 151, 28 A. 95, 22 L.R.A. 763; Isaacs v. Wishnick, 136 Minn. 317, 162 N.W. 297; Joyner v. City of Seattle, 144 Wash. 641, 258 P. 479, 481. A settlement of differences by mutual concessions or an adjustment of matters in dispute by mutual concessions. Forker v. Berkes, 111 Ind.App. 92, 38 N.E.2d 296, 299; In re Cusimano's Will, 22 N.Y.S.2d 677, 680, 681, 174"Misc. 1068.

It is essential to a compromise that there be mutual concessions or yielding of opposing claims. Scott v. Scott, 131 Okl. 144, 268 P. 245, 248; Hutson v. McConnell, 139 Okl. 240, 281 P. 760, 763.

In the civil law. An agreement whereby two or more persons mutually bind themselves to refer their legal dispute to the decision of a designated third person, who is termed "umpire" or "arbitrator." Dig. 4, 8; Mackeld. Rom. Law, § 471.

OFFER OF COMPROMISE. See Offer, *n.*

COMPROMISE VERDICT. One which is reached only by the surrender of conscientious convictions on one material issue by some jurors in return for a relinquishment of matters in their like settled opinion on another issue, and the result is one which does not hold the approval of the entire panel. North British & Mercantile Ins. Co. v. Parnell, 53 Ga.App. 178, 185 S.E. 122, 126.

COMPROMISSARII SUNT JUDICES. Jenk. Cent. 128. Arbitrators are judges.

COMPROMISSARIUS. In the civil law. An arbitrator.

COMPROMISSUM. A submission to arbitration.

COMPROMISSUM AD SIMILITUDINEM JUDICIORUM REDIGITUR. A compromise is brought into affinity with judgments. Strong v. Strong, 9 Cush. (Mass.) 571.

COMPTE ARRRTR. Fr. An account stated in writing, and acknowledged to be correct on its face by the party against whom it is stated. Paschal v. Union Bank of Louisiana, 9 La.Ann. 484.

COMPTER. In Scotch law. An accounting party.

COMPTROLLER. A public officer of a state or municipal corporation, charged with certain duties in relation to the fiscal affairs of the same, principally to examine and audit the accounts of collectors of the public money, to keep records, and report the financial situation from time to time. There are also officers bearing this name in the treasury department of the United States. Beneficial Loan Soc. of New Orleans v. Straus, La. App., 148 So. 85, 87.

Comptroller in bankruptcy. An officer in England, whose duty it is to receive from the trustee in each bankruptcy his accounts and periodical statements showing the proceedings in the bankruptcy, and also to call the trustee to account for any misfeasance, neglect, or omission in the discharge of his duties. Robs.Bankr. 13; Bankr.Act 1869, § 55.

Comptrollers of the Hanaper. In English law. Officers of the court of chancery; their offices were abolished by 5 & 6 Vict. c. 103.

State comptroller. A supervising officer of revenue in a state government, whose principal duty is the final auditing and settling of all claims against the state. State v. Doron, 5 Nev. 413.

COMPULSA. A judicially attested copy of a testimonio. State v. Balli, Tex.Civ.App., 173 S.W.2d 522, 527.

COMPULSION. Constraint; objective necessity; duress. Forcible inducement to the commission of an act. Navigation Co. v. Brown, 100 Pa. 346. The act of compelling or the state of being compelled; the act of driving or urging by force or by physical or moral constraint; subjection to force. Fluharty v. Fluharty, Del.Super., 193 A. 838, 840.

The "compulsion" which will excuse a criminal act must be present, imminent and impending and of such a nature as to induce a well-grounded apprehension of death or serious bodily harm. Browning v. State, 31 Ala.App. 137, 13 So.2d 54, 56.

To constitute "compulsion" or "coercion" rendering payment involuntary, there must be some actual or threatened exercise of power possessed, or supposedly possessed, by payee over payer's person or property, from which payer has no means of immediate relief except by advancing money. Wake Development Co. v. O'Leary, 118 Cal.App. 131, 4 P.2d 802, 803.

COMPULSORY, n. In ecclesiastical procedure, a compulsory is a kind of writ to compel the attendance of a witness, to undergo examination. Phillirn. Ecc. Law, 1258.

COMPULSORY, *adj.* Involuntary; forced; coerced by legal process or by force of statute.

COMPULSORY ARBITRATION. That which takes place where the consent of one of the parties is enforced by statutory provisions. Wood v. Seattle, 62 P. 135, 23 Wash. 1, 52 L.R.A. 369.

COMPULSORY NONSUIT. An involuntary nonsuit. See Nonsuit.

COMPULSORY PAYMENT. One not made voluntarily, but exacted by duress, threats, the enforcement of legal process, or unconscionably taking advantage of another. Singer Sewing Mach. Co. v. Teasley, 73 So. 969, 971, 198 Ala. 673.

COMPULSORY PROCESS. Process to compel the attendance in court of a person wanted there as a witness or otherwise; including not only the ordinary subpoena, but also a warrant of arrest or attachment if needed. State v. Nathaniel, 52 La.Ann. 558, 26 So. 1008.

It means such coercive means as the courts, by virtue of their inherent powers or sanction of the law, are permitted to employ, Greene v. Ballard, 174 Ky. 808, 192 S.W. 841, 845; and includes right to have subpoena served, as well as issued (Const. § 11). Fugate v. Commonwealth, 202 Ky. 509, 260 S.W. 338, 340.

COMPULSORY SALE OR PURCHASE. A term sometimes used to characterize the transfer of title to property under the exercise of the power of eminent domain. In re Barre Water Co., 62 Vt. 27, 20 A. 109, 9 L.R.A. 195; United States v. Certain Parcels of Land in City of San Diego, San Diego County, D.C.Cal., 44 F.Supp: 936, 937.

COMPURGATOR. One of several neighbors of a person accused of a crime, or charged as a defendant in a civil action, who appeared and swore that they believed him on his oath. 3 Bl.Comm. 341.

COMPUTING SCALE. A balance having an indicator apparatus so arranged that, within the limits of weights and prices for which it is contrived, one glance at a printed card, which is a part thereof, shows not only the weight of the article, but its price at a given rate per pound. Standard Computing Scale Co. v. Farrell, D.C.N. Y., 242 F. 87.

COMPUTO. Lat. To compute, reckon, or account. Used in the phrases *insimul cornputassent,* "they reckoned together," (see Insimul; ) *plene computavit,* "he has fully accounted," (see Plene;) *quod computet,* "that he account," (see Quod Computet.)

COMPUTATION. The act of computing, numbering, reckoning, or estimating. The account or estimation of time by rule of law, as distinguished from any arbitrary construction of the parties. CowelL

COMPUTUS. A writ to compel a guardian, bailiff, receiver, or accountant to yield up his accounts. It is founded on the statute Westm. 2, c. 12; Reg. Orig. 135.

COMTE. Fr. A count or earl. In the ancient French law, the *comte* was an officer having jurisdiction over a particular district or territory, with functions partly military and partly judicial.

CON. *Adj.* A slang or cant abbreviation for confidence, as a *con* man or a *con* game. Webster.

CON. *Prep.* With. Calef v. Calef, 54 Me. 365, 92 Am.Dec. 549.

CON-. A prefix meaning with, together. Webster.

CON BUENA FE. In Spanish law. With (or in) good faith.

CONACRE. In Irish practice. The payment of wages in land, the rent being worked out in labor at a money valuation. Wharton.

CONATUS QUID SIT, NON DEFINITUR IN JURE. 2 Bulst. 277. What an attempt is, is not defined in law.

CONCEAL. To hide; secrete; withhold from the knowledge of others; to withdraw from observation; to withhold from utterance or declaration; to cover or keep from sight. Hopper v. Hopkins, 162 Md. 448, 160 A. 166, 167.

The synonyms of conceal are "to hide; disguise, dissemble; secrete." To hide is generic; "conceal" is simply not to make known what we wish to secrete; disguise or dissemble is to conceal by assuming some false appearance; to secrete is to hide in some place of secrecy. A man may conceal facts, disguise his sentiments, dissemble his feelings, or secrete stolen goods. Darneal v. State, 14 Oki.Cr. 540, 174 P. 290, 292, 1 A.L.R. 638.

The word "conceal," according to the best lexicographers, signifies to withhold or keep secret mental facts from another's knowledge, as well as to hide or secrete physical objects from sight or observation. Gerry v. Dunham, 57 Me. 339.

CONCEALED. Not synonymous with "lying in. wait." If a person conceals himself for the purpose of shooting another unawares, he is lying in wait; but a person may, while concealed, shoot another without committing the crime of murder. People v. Miles, 55 Cal. 207.

The term "concealed weapons" means weapons willfully or knowingly covered or kept from sight. Owen v. State, 31 Ala. 387.

CONCEALERS. In old English law. Such as find out concealed lands; that is, lands privily kept from the king by common persons having nothing to show for them. They are called "a troublesome, disturbant sort of men; turbulent persons." Cowell.

CONCEALMENT. A withholding of something which one knows and which one, in duty, is bound to reveal. Dolcater v. Manufacturers & Traders Trust Co., D.C.N.Y., 25 F.Supp. 637, 641; Strauss v. Dubuque Fire & Marine Ins. Co. of Dubuque, Iowa, 132 Cal.App. 283, 22 P.2d 582.

The terms "misrepresentation" and "concealment" have a known and definite meaning in the law of insurance. Misrepresentation is the statement of something as fact which is untrue in fact, and which the assured states, knowing it to be not true, with an intent to deceive the underwriter, or which he states positively as true, without knowing it to be true, and which has a tendency to mislead, such fact in either case being material to the risk. Concealment is the designed and intentional withholding of any fact material to the risk, which the assured, in honesty and good faith, ought to communicate to the underwriter; mere silence on the part of the assured, especially as to some matter of fact which he does not consider it important for the underwriter to know, is not to be considered as such concealment. If the fact so untruly stated or purposely suppressed is not material, that is, if the knowledge or ignorance of it would not naturally influence the judgment of the underwriter in making the contract, or in estimating the degree and character of the risk, or in fixing the rate of the premium, it is not a "misrepresentation" or "concealment," within the clause of the conditions annexed to policies. Daniels v. Insurance Co., 12 Cush. (Mass.). 416, 59 Am.Dec. 192; Sun Ins. Office, Limited, of London v. Mallick, 160 Md. 71, 153 A. 35, 43.

CONCEALMENT MAY BE BASIS OF ESTOPPEL, Lo Bue v. Porazzo, 48 Cal.App.2d 82, 119 P.2d 346, 348. Elements 'of such estoppel are concealment of material facts with knowledge

thereof, ignorance thereof on part of person to whom representations are made, or from whom facts are concealed, intention that such person shall act thereon, and action induced thereby on his part. Rhoads v. Rhoads, Mo., 119 S.W.2d 247, 152; Rosser v. Texas Co., 173 Okl. 309, 48 P. 2d 3'27, 330.

The doctrine of "estoppel by concealment and suppression" applies only where there has been reduction to practice of invention. Bogoslowsky v. Huse, 142 F.2d 75, 76, 31 C.C.P.A. (Patents) 1034.

CONCEALMENT OF CAUSE OF ACTION. To constitute it so as to prevent running of limitations, some trick or artifice must be employed to prevent inquiry or elude investigation, or to mislead and hinder party who has a cause of action from obtaining information, and acts relied on must be of an affirmative character and fraudulent. Middleton v. Pruden, 57 Ga.App. 555, 196 S.E. 259, 262.

CONCEDER. Fr. In French law. To grant. See Concession.

CONCEDO. Lat. I grant. A word used in old Anglo-Saxon grants, and in statutes merchant.

CONCEPTION. The beginning of pregnancy, *(q. v.).*

CONCEPTUM. In the civil law. A theft *(furtum)* was called *"conceptum,"* when the thing stolen was searched for, and found upon some person in the presence of witnesses. Inst. 4, 1, 4.

CONCERN. To pertain, relate, or belong to; be of interest or importance to; have connection with; to have reference to; to involve; to affect the interest of. People v. Photocolor Corporation, 281 N.Y.S. 130, 156 Misc. 47.

CONCERNING, CONCERNED. Relating to; pertaining to; affecting; involving; being substantially engaged in or taking part in. U. S. v. Fulkerson, D.C.Cal., 74 F. 631; May v. Brown, 3 Barn. & C. 137; People v. Marty, 59 Cal.App. 503, 210 P. 964, 965.

CONCERT OF EUROPE. The union between the chief powers of Europe for purposes of concerted action in matters affecting their mutual interests. It is sometimes called the *Primacy of the Great Powers.* It has existed under various forms from the time of the Congress of Vienna, in 1815.

CONCERT-ROOM. A place in which musical, as distinguished from dramatic, performances are usually given. People ex rel. McShane v. Keller, 161 N.Y.S. 132, 138, 96 Misc. 92.

CONCERTED ACTION (or PLAN). Action that has been planned, arranged, adjusted, agreed on and settled between parties acting together pursuant to some design or scheme. State v. Jessup & Moore Paper Co., 4 Boyce (Del.) 248, 88 A. 449, 451; Rock Creek Oil Corporation v. Moore, Tex. Civ.App., 41 S.W.2d 501, 504.

CONCESSI. Lat. I have granted. At common law, in a feoffment or estate of inheritance, this word does not imply a warranty; it only creates a covenant in a lease for years. Co.Litt. 384a. Koch v. Hustis, 113 Wis. 599, 87 N.W. 834; Vaughan's Argument in Vaughan 126; Butler's note, Co. Litt. 384. But see 1 Freem. 339, 414.

CONCESSIMUS. Lat. We have granted. A term used in conveyances, the effect of which was to create a joint covenant on the part of the grantors. 5 Co. 16; Bacon, Abr. *Covenant.*

CONCESSIO. In old English law. A grant. One of the old common assurances, or forms of conveyance.

CONCESSIO PER REGEM FIERI DEBET DE CERTITUDINE. 9 Coke, 46. A grant by the king ought to be made from certainty.

CONCESSIO VERSUS CONCEDENTEM LATAM INTERPRETATIONEM HABERE DEBET. A grant ought to have a broad interpretation (to be liberally interpreted) against the grantor. Jenk. Cent. 279.

CONCESSION. A grant; ordinarily applied to the grant of specific privileges by a government; French and Spanish grants in Louisiana. Western M. & M. Co. v. Peytona Coal Co., 8 W.Va. 446. A voluntary grant, or a yielding to a claim or demand; rebate; abatement. U. S. v. P. Koenig Coal Co., D.C.Mich., 1 F.2d 738, 740; Williams v. Belvedere Hotel Co., 137 Md. 665, 113 A. 335, 337, 14 A.L.R. 622.

CONCESSIT SOLVERE. He granted and agreed to pay. In English law. An action of debt upon a simple contract. It lies by custom in the mayor's court, London, and Bristol city court.

CONCESSOR. In old English law. A grantor.

CONCESSUM. Accorded; conceded. This term, frequently used in the old reports, signifies that the court admitted or assented to a point or proposition made on the argument.

CONCESSUS. A grantee.

CONCILIABULUM. A council house.

CONCILIATION. In French law. The formality to which intending litigants are subjected in cases brought before the *juge de paix.* The judge convenes the parties and endeavors to reconcile them. Should he not succeed, the case proceeds. In criminal and commercial cases, the preliminary of conciliation does not take place. Arg. Fr. Mere. Law, 552.

CONCILIUM. Lat. A council.

Roman Law

A meeting of a section of the people to consider and decide matters especially affecting itself. Launspach, State and Family in Early Rome 70. Also argument in a cause, or the sitting of the court to hear argument; a motion for a day .for the argument of a cause; a day allowed to a de-

Pendant to present his argument; an imparlance. State ex rel. Stueve v. Reynolds, 266 Mo. 12, 178 S.W. 468, 470.

CONCILIUM ORDINARIUM. In Anglo-Norman times. An executive and residuary judicial committee of the *Aula Regis, (q. v.).*

CONCILIUM REGIS. An ancient English tribunal existing during the reigns of Edward L and Edward II., to which was referred cases of extraordinary difficulty. Co.Litt. 304.

CONCIONATOR. In old records. A common council man; a freeman called to a legislative hall or assembly. Cowell.

CONCLUDE. To finish; determine; to estop; to prevent.

CONCLUDED. Ended; determined; est opped; prevented from.

CONCLUSION. The end; the termination; the act of finishing or bringing to a close. The conclusion of a declaration or complaint is all that part which follows the statement of the plaintiff's cause of action. The conclusion of a plea is its final clause, in which the defendant either "puts himself upon the country" (where a material averment of the declaration is traversed and issue tendered) or offers a verification, which is proper where new matter is introduced. State v. Waters, 1 Mo.App. 7.

Trial Practice

It signifies making the final or concluding address to the jury or the court. The act of a man by which he has confessed a matter or thing which he can no longer deny.

This is, in general, the privilege of the party who has to sustain the burden of proof.

CONCLUSION AGAINST THE FORM OF THE STATUTE. The proper form for the conclusion of an indictment for an offense created by statute *is* the technical phrase "against the form of the statute in such case made and provided;" or, in Latin, *contra formam statuti.*

CONCLUSION OF FACT. An inference drawn from the subordinate or evidentiary facts. Maeder Steel Products Co. v. Zanello, 109 Or. 562, 220 P. 155, 158. Reed v. Woodmen of the World, 94 Mont 374, 22 P.2d 819, 822.

CONCLUSION OF LAW. Within the rule that pleadings should contain only facts, and not conclusions of law, this means a proposition not arrived at by any process of natural reasoning from a fact or combination of facts stated, but by the application of the artificial rules of law to the facts pleaded. Levins v. Rovegno, 71 Cal. 273, 12 P. 161.

CONCLUSION TO THE COUNTRY. In pleading. The tender of an issue to be tried by jury. Co. Litt. 126 a; 1 Saund. 103; 1 Chit. Pl. 592; Com. Dig. *Pleader,* E, 32.

CONCLUSIVE. Shutting up a matter; shutting out all further evidence; not admitting of explanation or contradiction; putting an end to inquiry; final; irrefutable; decisive. Edwards v. Shreveport Creosoting Co., 207 La. 699, 21 So.2d 878. Beyond question or beyond dispute; manifest; plain; clear; obvious; visible; apparent; indubitable; palpable; and "notorious." Covington County v. Fite, 120 Miss. 421, 82 So. 308, 309.

As to conclusive "Presumption," and "Proof," see those titles.

CONCLUSIVE EVIDENCE. That which is incontrovertible, either because the law does not permit it to be contradicted, or because it is so strong and convincing as to overbear all proof to the contrary and establish the proposition in question beyond any reasonable doubt. Thompson Lumber Co. v. Interstate Commerce Commission (Com.Ct.) 193 F. 648, 682.

CONCORD. In the old process of levying a fine of lands, the concord was an agreement between the parties (real or feigned) in which the deforciant (or he who keeps the other out of possession) acknowledges that the lands in question are the right of complainant; and, from the acknowledgment or admission of right thus made, the party who levies the fine is called the "cognizor," and the person to whom it *is* levied the "cognizee." 2 Bl.Comm. 350.

The term also denotes an agreement between two persons, one of whom has a right of action against the other, settling what amends shall be made for the breach or wrong; a compromise or an accord.

Old Practice

An agreement between two or more, upon a trespass committed, by way of amends or satisfaction for it. Plowd. 5, 6, 8.

CONCORDARE LEGES LEGIBUS EST OPTIMUS INTERPRETANDI MOMS. To make laws agree with laws is the best mode of interpreting them. Halk. Max. 70.

CONCORDAT. In public law. A compact or convention between two or more independent governments.

An agreement made by a temporal sovereign with the pope, relative to ecclesiastical matters.

In French law. A compromise effected by a bankrupt with his creditors, by virtue of which he engages to pay within a certain time a certain proportion of his debts, and by which the creditors agree to discharge the whole of their claims in consideration of the same. Arg. Fr. Merc. Law, 553.

CONCORDIA. Lat. In old English law. An agreement, or concord. Fleta, lib. 5, c. 3, § 5. The agreement or unanimity of a jury. *Compellere ad concordiam.* Fleta, lib. 4, c. 9, § 2.

CONCORDIA DISCORDANTIUM CANONUM. The harmony of the discordant canons. A collection of ecclesiastical constitutions made *by*

Grattan, an Italian monk, A.D. 1151; more commonly known by the name of *"Decretum* Gratianti."

CONCORDIA PARVIE RES CRESCUNT ET OPULENTIA LITES. 4 Inst. 74. Small means increase by concord and litigations by opulence.

CONCUBARIA. A fold, pen, or place where cattle lie. Cowell.

CONCUBEANT. Lying together, as cattle.

CONCUBINAGE. A species of loose or informal marriage which took place among the ancients, and is yet in use in some countries. See Concubinatus.

The act or practice of cohabiting, in sexual commerce, without the authority of law or a legal marriage. Succession of Lannes, 187 La. 17, 174 So. 94, 98.

The words *concubinage* and *prostitution* have no common law meaning, but in their popular sense cover all cases of lewd Intercourse; People v. Cummons, 56 Mich. 544, 23 N.W. 215.

An exception against a woman suing for dower, on the ground that she was the concubine, and not the wife, of the man of whose land she seeks to be endowed. Britt. c. 107.

CONCUBINATUS. In Roman law. An informal, unsanctioned, or "natural" marriage, as contradistinguished from the *justce nuptice,* or *justum matrimonium,* the civil marriage.

CONCUBINE. (1) A woman who cohabits with a man to whom she is not married. State v. Dusin, 125 Kan. 400, 264 P. 1043, 1044. (2) A sort of inferior wife, among the Romans, upon whom the husband did not confer his rank or quality.

CONCUR. To agree; accord; act together; consent. In the practice of appellate courts, a "concurring opinion" is one filed by one of the judges or justices, in which he agrees with the conclusions or the result of another opinion filed in the case (which may be either the opinion of the court or a dissenting opinion) though he states separately his views of the case or his reasons for so concurring. State v. Pierce, 175 Wash. 461, 27 P.2d 1083.

In Louisiana law. To join with other claimants in presenting a demand against an insolvent estate.

CONCURATOR. In the civil law. A joint or co-curator, or guardian.

CONCURRENCE. In French law. The possession, by two or more persons, of equal rights or privileges over the same subject-matter.

CONCURRENCE DELOYALE. A term of the French law nearly equivalent to "unfair trade competition;" and used in relation to the infringement of rights secured by trade-marks, etc. It signifies a dishonest, perfidious, or treacherous rivalry in trade, or any manoeuvre calculated to prejudice the good will of a business or the value of the name of a property or its credit or renown with the public, to the injury of a business competitor. Simmons Medicine Co. v. Mansfield Drug Co., 93 Tenn. 84, 23 S.W. 165.

CONCURRENT. Running together; having the same authority; acting in conjunction; agreeing in the same act or opinion; pursuit of same course; contributing to the same event; contemporaneous. Brinkman v. Morgan, C.C.A.Kan., 253 F. 553, 554. Co-operating, accompanying, conjoined, associated, concomitant, joint and equal, existing together, and operating on the same subject. Rose v. Sprague, 248 Ky. 635, 59 S.W.2d 554, 556. United in agreement. State ex rel. School Dist. No. 8, v. Lensman, 108 Mont. 118, 88 P.2d 63, 68.

As to concurrent "Cause," "Covenants," "Insurance," "Lease," "Negligence," "Resolution," and "Writs," see those titles.

CONCURRENT JURISDICTION. The jurisdiction of several different tribunals, each authorized to deal with the same subject-matter at the choice of the suitor. Cashman v. Vickers, 69 Mont. 516, 223 P. 897, 898.

CONCURRENT LIENS. Maritime liens are concurrent when they are of the same rank, and for supplies or materials or services in preparation for the same voyage, or if they arise on different bottomry bonds to different holders for advances at the same time for the same repairs, The J. W. Tucker, D.C.N.Y., 20 F. 132.

CONCURRENT POWER. Political powers exercised independently in the same field of legislation by both federal and state governments. State ex rel. School Dist. No. 8, v. Lensman, 108 Mont. 118, 88 P.2d 63, 68.

CONCURSO. In the law of Louisiana, the ,name of a suit or remedy to enable creditors to enforce their claims against an insolvent or failing debtor. Schroeder v. Nicholson, 2 La. 355. Litigation or opportunity of litigation between various creditors, each claiming adversely to one another to share in a fund or an estate, object being to assemble in one accounting all claimants on the fund. Seal v. Gano, 160 La. 636, 107 So. 47S, 474.

CONCURSUS. In the civil law. (1) A running together; a collision, as *concursus creditorum,* a conflict among creditors. Graphic Arts Bldg. Co. v. Union Indemnity Co., 163 La. 1, 111 So. 470, 471; Miller v. Bonner, 163 La. 332, 111 So. 776, 778; (2) A concurrence, or meeting, as *concursus dctionum,* concurrence of actions.

A proceeding in Louisiana similar to interpleader. See Louisiana Molasses Co. v. Le Sassier, 52 La.Ann. 2070, 28 So. 217.

CONCUSS. In Scotch law. To coerce.

CONCUSSIO. In the civil law. The offense of extortion by threats of violence. Dig. 47, 13.

CONCUSSION. In the civil law. The unlawful forcing of another by threats of violence to give something of value. It differs from robbery, in

this: That in robbery the thing is taken by force, while in concussion it is obtained by threatened violence. Heinec.Elem. § 1071.

In medical jurisprudence. Concussion of the brain is a jarring of the brain substance, by a fall, blow, or other external injury, without laceration of its tissue, or with only microscopical laceration. Mathews v. Hayne, La.App., 188 So. 462, 468.

CONDEDIT. In ecclesiastical law. The name of a plea entered by a party to a libel filed in the ecclesiastical court, in which it is pleaded that the deceased made the will which is the subject of the suit, and that he was of sound mind. 2 Eng. Ecc. R. 438; 6 Eng. Eec. R. 431.

CONDEMN. To find or adjudge guilty. 3 Leon. 68. To adjudge or sentence. 3 Bl.Comm. 291. To adjudge (as an admiralty court) that a vessel is a prize, or that she is unfit for service. 1 Kent, Comm. 102; 5 Esp. 65. To set apart or expropriate property for public use, in the exercise of the power of eminent domain. State v. Sayer, 43 S.D. 45, 177 N.W. 807, 809.

CONDEMNATION. In admiralty law. The judgment or sentence of a court having jurisdiction and acting *in rem,* by which (1) it is declared that a vessel which has been captured at sea as a prize was lawfully so seized and is liable to be treated as prize; or (2) 'that property which has been seized for an alleged violation of the revenue laws, neutrality laws, navigation laws, etc., was lawfully so seized, and is, for such cause, forfeited to the government; or (3) that the vessel which is the subject of inquiry is unfit and unsafe for navigation. Gallagher v. Murray, 9 Fed.Cas. 1087.

In the civil law. A sentence or judgment which condemns some one to do, to give, or to pay something, or which declares that his claim or pretensions are unfounded. Lockwood v. Saffold, 1 Ga. 72; State v. Harr, 24 Tenn.App. 298, 143 S.W.2d 893, 895.

In real property law. The process by which property of a private owner is taken for public use, without his consent, but upon the award and payment of just compensation, being in the nature of a forced sale and condemner stands toward owner as buyer toward seller. Atlanta, K. & N. R. Co. v. Southern Ry. Co., C.C.A.Tenn., 131 F. 666, 66 C.C.A. 601; Jones v. Oklahoma City, 192 Okl. 470, 137 P.2d 233, 237, 155 A.L.R. 375.

A. "condemnation proceeding" is a special proceeding at law to determine in a single action the damages done by the taking, but it is not a civil action, or a civil process within the meaning of the statutes relating to civil process. In re New Haven Water Co., 86 Conn. 361, 85 A. 636, 638. The law authorizing it must be strictly construed, and every condition and requirement must be shown to have been complied with. Richter v. Rodgers, 327 Mo. 543, 37 S.W.2d 523, 528.

CONDEMNATION MONEY. In practice. The damages which the party failing in an action is adjudged or *condemned* to pay; sometimes simply called the "condemnation."

As used in an appeal bond, this phrase means the damages which should be awarded against the appellant by the judgment of the court. It does not embrace damages not included in the judgment. Thomas v. Gethman, 91 Old. 42, 215 P. 731, 732.

CONDESCENDENCE. In the Scotch law. A part of the proceedings in a cause, setting forth the facts of the case on the part of the pursuer or plaintiff.

CONDICTIO. In Roman law. A general term for actions of a personal nature, founded upon an obligation to give or do a certain and defined thing or service. It is distinguished from vindi*catio rei,* which is an action to vindicate one's right of property in a thing by regaining (or retaining) possession of it against the adverse claim of the other party.

CONDICTIO CERTI. An action which lies upon a promise to do a thing, where such promise or stipulation is certain, *(si certa sit stipulatio.)* Inst. 3, 16, pr.; Id. 3, 15, pr.; Dig. 12, 1; Bract. fol. 103b.

CONDICTIO EX LEGE. An action arising where the law gave a remedy, but provided no appropriate form of action. Calvin.

CONDICTIO INDEBITATI. An action which lay to recover anything which the plaintiff had given or paid to the defendant, by mistake, and which he was not bound to give or pay, either in fact or in law.

CONDICTIO REI FURTIVIE. An action which lay to recover a thing stolen, against the thief himself, or his heir. Inst. 4, 1, 19.

CONDICTIO SINE CAUSA. An action which lay in favor of a person who had given or promised a thing without consideration,' *(causa.)* Dig. 12, 7; Cod. 4, 9.

CONDITIO. Lat. A condition.

CONDITIO BENEFICIALIS, QUIE STATUM CONSTRUIT, BENIGNE SECUNDUM VERBORUM INTENTIONEM EST INTERPRETANDA; ODIOSA AUTEM, QUIE STATUM DESTRUIT, STRICTE SECUNDUM BERBORUM PROPRIETATEM ACCIPIENDA. 8 Coke, 90. A beneficial condition, which creates an estate, ought to be construed favorably, according to the intention of the words; but a condition which destroys an estate is odious, and ought to be construed strictly according to the letter of the words.

CONDITIO DICITUR, CUM QUID IN CASUM INCERTUM QUI POTEST TENDERE AD ESSE AUT NON ESSE, CONFERTUR. Co. Litt. 201. It is called a "condition," when something is given on an uncertain event, which may or may not come into existence.

CONDITIO ILLICITA HABETUR PRO NON ADJECTA. An unlawful condition is deemed as not annexed.

CONDITIO PR1ECEDENS ADIMPLERI DEBET PRIUS QUAM SEQUATUR EFFECTUS. Co. Litt. 201. A condition precedent must be fulfilled before the effect can follow.

CONDITION. A future and uncertain event upon the happening of which is made to depend the existence of an obligation, or that which subordinates the existence of liability under a contract to a certain future event. Standard Surety & Casualty Co. v. Wynn, Tex.Civ.App., 172 S.W.2d 789, 792; Barber Asphalt Paving Co. v. St. Louis Cypress Co., 121 La. 152, 46 So. 193, 197.

Civil Law

The rank, situation, or degree of a particular person in some one of the different orders of society.

An agreement or stipulation in regard to some uncertain future event, not of the essential nature of the transaction, but annexed to it by the parties, providing for a change or modification of their legal relations upon its occurrence. Mackeld. Rom. Law, § 184.

Classification. Conditions are of the following several kinds:

The *casual* condition is that which depends on chance, and is in no way in the power either of the creditor or of the debtor. Civ.Code La. art. 2023.

A *mixed* condition is one that depends at the same time on the will of one of the parties and on the will of a third person, or on the will of one of the parties and also on a casual event. Civ.Code La. art. 2025.

The *potestative* condition is that which makes the execution of the agreement depend on an event which it is in the power of the one or the other of the contracting parties to bring about or to hinder. Civ.Code La. art. 2024.

A *resolutory* or *dissolving* condition is that which, when accomplished, operates the revocation of the obligation, placing matters in the same state as though the obligation had not existed. It does not suspend the execution of the obligation. It only obliges the creditor to restore what he has received in case the event provided for in the condition takes place. Civ.Code La. art. 2045; Moss v. Smoker, 2 La.Ann. 991.

A *suspensive* condition is that which depends, either on a future and uncertain event, or on an event which has actually taken place, without its being yet known to the parties. In the former case, the obligation cannot be executed till after the event; in the latter, the obligation has its effect from the day on which it was contracted, but it cannot be enforced until the event be known. Civ.Code La. art. 2043; New Orleans v. Railroad Co., 18 S.Ct. 875, 171 U.S. 312, 43 L.Ed. 178; Moss v. Smoker, 2 La.Ann. 991. A condition which prevents a contract from going into operation until it has been fulfilled.

Common Law

The rank, situation, or degree of a particular person in some one of the different orders of society; or his *status* or situation, considered as a juridical person, arising from positive law or the institutions of society. Thill v. Pohlman, 76 Iowa, 638, 41 N.W. 385.

A clause in a contract or agreement which has for its object to suspend, rescind, or modify the principal obligation, or, in case of a will, to suspend, revoke, or modify the devise or bequest; a qualification, restriction, or limitation modifying or destroying the original act with which it is connected; an event, fact, or the like that is necessary to the occurrence of some other, though not its cause; a prerequisite. Towle v. Remsen, 70 N.Y. 303.

A *modus* or quality annexed by him that hath an estate, or interest or right to the same, whereby an estate, etc., may either be defeated, enlarged, or created upon an uncertain event. Co.Litt. 201a.

A qualification or restriction annexed to a conveyance of lands, whereby it is provided that in case a particular event does or does not happen, or in case the grantor or grantee does or omits to do a particular act, an estate shall commence, be enlarged, or be defeated. Anderson v. Palladine, 39 Cal.App. 256, 178 P. 553, 554.

An "estate on condition" arises where an estate is granted, either in fee simple or otherwise, with an express qualification annexed, whereby the estate granted shall either commence, be enlarged, or be defeated, upon performance or breach of such qualification or condition. Hall v. Quinn, 190 N.C. 326, 130 S.E. 18, 20. Moe v. Gier, 116 Cal.App. 403, 2 P.2d 852, 855.

In insurance parlance, the printed conditions on the inside of the policy which serve generally as a limitation of risk or of liability or impose various conditions requiring compliance by the insured. Federal Intermediate Credit Bank of Baltimore v. Globe & Rutgers Fire Ins. Co., D.C. Md., 7 F.Supp. 56, 68.

Mode or state of being; state or situation; essential quality; property; attribute. Consolidated Arizona Smelting Co. v. Egich, 22 Ariz. 543, 199 P. 132, 134.

Classification. The different kinds of conditions known to the common law may be arranged and described as follows:

Express and implied conditions are also called by the older writers, respectively, *conditions* in *deed* (or in fact, the Law French term being *conditions en fait)* and *conditions in law.* Co. Litt. 201a.

They are either *express* or *implied,* the former when incorporated in express terms in the deed, contract, lease, or grant; the latter, when inferred or presumed by law, from the nature of the transaction or the conduct of the parties, to have been tacitly understood between them as a part of the agreement, though not expressly mentioned. 2 Crabb, Real Prop. p. 792; Bract. fol. 47; Civ.Code La. art. 2026; Raley v. Umatilla County, 15 Or. 172, 13 P. 890, 3 Am.St.Rep. 142.

They are *possible* or *impossible;* the former when they admit of performance in the ordinary course of events; the latter when it is contrary

to the course of nature or human limitations that they should ever be performed.

They are *lawful* or *unlawful;* the former when their character is not in violation of any rule, principle, or policy of law; the latter when they are such as the law will not allow to be made.

They are *consistent* or *repugnant;* the former when they are in harmony and concord with the other parts of the transaction; the latter when they contradict, annul, or neutralize the main purpose of the contract. Repugnant conditions are also called "insensible."

They are *affirmative* or *negative;* the former being a condition which consists in doing a thing; as provided that the lessee shall pay rent, etc., and the latter being a condition which consists in not doing a thing; as provided that the lessee shall not alien, etc. Shep. Touch. 118.

They are *precedent* or *subsequent.* A condition precedent is one which must happen or be performed before the estate to which it is annexed can vest or be enlarged; or it is one which is to be performed before some right dependent thereon accrues, or some act dependent thereon is performed. Federal Land Bank of Louisville v. Luckenbill, 213 Ind. 616, 13 N.E.2d 531, 533. A "condition precedent" is one that is to be performed before the agreement becomes effective, and which calls for the happening of some event or the performance of some act after the terms of the contract have been agreed on, before the contract shall be binding on the parties. Rogers v. Maloney, 85 Or. 61, 165 P. 357, 358; Mercer-Lincoln Pine Knob Oil Co. v. Pruitt, 191 Ky. 207, 229 S.W. 374. A condition subsequent is one annexed to an estate already vested, by the performance of which such estate is kept and continued, and by the failure or non-performance of which it is defeated; or it is a condition referring to a future event, upon the happening of which the obligation becomes no longer binding upon the other party, if he chooses to avail himself of the condition. Co. Litt. 201; Carroll v. Carroll's Ex'r, 248 Ky. 386, 58 S.W.2d 670, 672.

Conditions may also be *positive* (requiring that a specified event shall happen or an act be done) and *restrictive* or *negative,* the latter being such as impose an obligation not to do a particular thing, as, that a lessee shall not alien or sub-let or commit waste, or the like. Shep. Touch. 118.

They may be *single, copulative,* or *disjunctive.* Those of the first kind require the performance of one specified thing only; those of the second kind require the performance of divers acts or things; those of the third kind require the performance of one of several things. Shep. Touch. 118.

Conditions may also be *independent, dependent,* or *mutual.* They belong to the first class when each of the two conditions must be performed without any reference to the other; to the second class when the performance of one condition is not obligatory until the actual performance of the other; and to the third class when neither party need perform his condition unless the other is ready and willing to perform his, or, in other words, when the mutual covenants go to the whole consideration on both sides and each is precedent to the other. Huggins v. Daley, W.Va., 99 F. 609, 40 C.C.A. 12, 48 L.R.A. 320.

The following varieties may also be noted: A condition *collateral* is one requiring the performance of a collateral act having no necessary relation to the main subject of the agreement. A *compulsory* condition is one which expressly requires a thing to be done, as, that a lessee shall pay a specified sum of money on a certain day or his lease shall be void. Shep. Touch. 118. Concurrent conditions are those which are mutually dependent and are to be performed at the same time. Milwaukee Land Co. v. Ruesink, 50 Mont. 489, 148 P. 396, 401. A condition *inherent* is one annexed to the rent reserved out of the land whereof the estate is made, or rather, to the estate in the land, in respect of rent. Shep. Touch. 118.

### French Law

The following peculiar distinctions are made: (1) A condition is *easuelle* when it depends on a chance or hazard; (2) a condition is *potestative* when it depends on the accomplishment of something which is in the power of the party to accomplish; (3) a condition is *mixte* when it depends partly on the will of the party and partly on the will of others; (4) a condition is *suspensive* when it is a future and uncertain event, or present but unknown event, upon which an obligation takes or fails to take effect; (5) a condition is *resolutoire* when it is the event which undoes an obligation which has already had effect as such. Brown.

### Synonyms Distinguished

A "condition" is to be distinguished from a *limitation,* in that the latter may be to or for the benefit of a stranger, who may then take advantage of its determination, while only the grantor, or those who stand in his place, can take advantage of a condition. Hoselton v. Hoselton, 166 Mo. 182, 65 S.W. 1005; and in that a limitation ends the estate without entry or claim, which is not true of a condition. It also differs from a *conditional limitation.* In determining whether, in the case of estates greater than estates for years, the language constitutes a "condition" or a "conditional limitation," the rule applied is that, where an estate is so expressly limited by the words of its creation that it cannot endure for any longer time than until the condition happens on which the estate is to fail, this is limitation, but when the estate is expressly granted on condition in deed, the law permits it to endure beyond the time of the contingency happening, unless the grantor takes advantage of the breach of condition, by making entry. Lonas v. Silver, 195 N.Y. S. 214, 215, 201 App.Div. 383; Yarbrough v. Yarbrough, 151 Tenn. 221, 269 S.W. 36, 38. It differs also from a *covenant,* which can be made by either grantor or grantee, while only the grantor can make a condition (Co. Litt. 70) ; De Grasse v. Verona Mining Co., 185 Mich. 514, 152 N.W. 242, 246; The chief distinction between a condition subse-

quent in a deed and a covenant pertains to the remedy in event of breach, which, in the former case, subjects the estate to a forfeiture, and in the latter is merely a ground for recovery of damages. Bartell v. Senger, 160 Md. 685, 155 A. 174, 176. A *charge* is a devise of land with a bequest out of the subject-matter, and a charge upon the devisee personally, in respect of the estate devised, gives him an estate on condition. A condition also differs from a *remainder;* for, while the former may operate to defeat the estate before its natural termination, the latter cannot take effect until the completion of the preceding estate.

CONDITIONAL. That which is dependent upon or granted subject to a condition.

As to conditional "Acceptance," "Appearance," "Bequest," "Contract," "Delivery," "Devise," "Fee," "Guaranty," "Judgment," "Legacy," "Limitation," "Obligation," "Pardon," "Privilege," and "Sale," *see* those titles.

CONDITIONAL CREDITOR. In the civil law. A creditor having a future right of action, or having a right of action in expectancy. Dig. 50, 16, 54.

CONDITIONAL INDORSEMENT. See Indorsement.

CONDITIONAL STIPULATION. In the civil law. A stipulation to do a thing upon condition, as the happening of any event.

CONDITIONALLY PRIVILEGED COMMUNICATION. One made in good faith on any subject matter in which the person publishing has an interest, or in reference to which he has a duty, if made to a person having a corresponding interest or duty, even though it contains matter which otherwise would be actionable. Cook v. East Shore Newspapers, 327 Ill.App. 559, 64 N.E.2d 751, 760.

The essential elements of a "conditionally privileged communication" are good faith, an interest to be upheld, a statement limited in its scope to such purpose, a proper occasion, and publication in a proper manner to proper persons. Cook v. East Shore Newspaper, 327 Ill.App. 559, 64 N.E. 2d 751.

CONDITIONES QUIELIBET ODIOSIE; MAXDIE AUTEM CONTRA MATRIMONIUM ET COMMERCIUM. Any conditions are odious, but especially those which are against [in restraint of ] marriage and commerce. Lofft, Appendix, 644.

CONDITIONS OF SALE. The terms upon which sales are made at auction; usually written or printed and exposed in the auction room at the time of sale.

CONDOMINIA. In the civil law. Co-ownerships or limited ownerships, such as *emphyteusis, superficies, pignus, hypotheca, ususfructus, usus,* and *habitatio.* These were more than mere *Jura* in *re aliend,* being portion of the *dominium* itself, although they are commonly distinguished from the *dominium strictly* so called. Brown.

CONDOMINIUM. System of separate ownership of individual units in multiple-unit building. Susskind v. 1136 Tenants Corp., 251 N.Y.S.2d 321, 327, 43 Misc.2d 588.

CONDONACION. In Spanish law. The remission of a debt, either expressly or tacitly.

CONDONATION. The conditional remission or forgiveness, by means of continuance or resumption of marital cohabitation, by one of the married parties, of a known matrimonial offense committed by the other, that would constitute a cause of divorce; the condition being that the offense shall not be repeated. Pain v. Pain, 37 Mo.App. 115., Betz v. Betz, 25 N.Y.Super.Ct. 696; State v. Manos, 204 N.C. 52, 167 S.E. 493; Thum v. Thum, 105 Colo. 352, 98 P.2d 279, 280.

"Condonation," to constitute valid defense in divorce action, must be free, voluntary, and not induced by duress or fraud; "condonation" means pardon of offense, voluntary overlooking or implied forgiveness by treating offender as if offense had not been committed. Panther v. Panther, 147 Okl. 131, 295 P. 219, 221. The term is also sometimes applied to forgiveness of a past wrong, fault, injury, or breach of duty in other relations, as, for example, in that of master and servant. Leatherberry v. Odell, C.C. N.C., 7 F. 648. Also, antenuptial unchastity is capable of "condonation." Wesley v. Wesley, 181 Ky. 135, 204 S.W. 165, 166.

CONDONE. To make condonation of.

CONDUCE. To contribute to as a result. Board of Com'rs of Mercer County v. Deitsch, 94 Ohio St. 1, 113 N.E. 745, 747.

CONDUCT, *v.* To manage; direct; lead; have direction; carry on; regulate; do business. Wichita Film & Supply Co. v. Yale, 194 Mo.App. 60, 184 S.W. 119, 121; State v. Mahfouz, 181 La. 23, 158 So. 609; Scholz v. Leuer, 7 Wash.2d 76, 109 P.2d 294, 301.

CONDUCT, n. Personal behavior; deportment; mode of action; any positive or negative act. Kelly v. State, 151 Md. 87, 133 A. 899, 904; Lamborn v. New York Cotton Exch., 197 N.Y.S. 57, 60, 203 App.Div. 565.

CONDUCT, ESTOPPEL BY. An estoppel exists where a man by his own acts or acceptance is concluded from saying the truth. Menzenberger v. American State Bank, 101 Ind.App. 600, 198 N. E. 819. See, also, Equitable Estoppel.

The doctrine does not apply to an agreement which is illegal. Miller v. California Roofing Co., 55 Cal.App.2d 136, 130 P.2d 740, 745.

Elements or essentials of estoppel are acts done which cannot be contravened without fraud or gross misconduct, Tradesmens Nat. Bank of New Haven v. Minor, 190 A. 270, 272, 122 Conn. 419; change of position to injury of party claiming benefit of estoppel, Mundt v. Mallon, 106 Mont. 244, 76 P.2d 326, 329; Thompson v. Hudgens, 159 S.E. 807, 811, 161 S.C. 450; false representation or concealment, Marshall v. Wilson, 175 Or. 506, 154 P.2d 547, 553; Hamilton v. Northeast Mut. Ins. Ass'n, Mo.App., 116 S.W.2d 159, 163; ignorance of facts of one claiming right of estoppel, McCarthy v. Union Pac. Ry. Co., 58 Wyo. 308, 131 P.2d 326, 330, 332; inducement to do or forbear doing, something one would not, or would, otherwise have done, O'Brien v. U. S., C.C.A.Ind., 51 F.2d 674, 678; intent to have other party act or conduct calculated to mislead, Woodmen of the World Life Ins. Soc. v. Greathouse, 242 Ala. 532, 7 So.2d 89, 91; Marshall v. Wilson, 175 Or. 506,

154 P.2d 547, 553; knowledge of party sought to be estopped, McLearn v. Hill, 276 Mass. 519, 177 N.E. 617, 619, 77 A.L.R. 1039; misleading of person claiming estoppel, Dodd v. Rotterman, 161 N.E. 756, 761, 330 Ill. 362; State v. Abernathy, 159 Tenn. 175, 17 S.W.2d 17, 19; prejudice to party claiming estoppel, Combs v. Salyer, 165 S.W.2d 40, 43, 291 Ky. 592; Burlington Sa[y]. tank of Burlington, Vt., v. Rockwell, C.C.A.Idaho, 31 F.2d 27, 29; reliance upon conduct of one sought to be estopped, Wiedersum v. Atlantic Cement Products, 25 N.Y.S.2d 496, 501, 261 App.Div. 305; State v. Smith, 135 Neb. 423, 281 N.W. 851, 856; representation or concealment of material facts, City Dairy Co. v. Uservo, Inc., 101 Ind.App. 375, 199 N.E. 457.

CONDUCT MONEY. In English practice. Money paid to a witness who has been subpoenaed on a trial, sufficient to defray the reasonable expenses of going to, staying at, and returning from the place of trial. Lush, Pr. 460; Archb. New Pr. 639.

CONDUCT! ACTIO. In the civil law. An action which the hirer *(conductor)* of a thing might have against the letter, *(locator.)* Inst. 3, 25, pr. 2.

CONDUCTIO. In the civil law. A hiring. Used generally in connection with the term *locatio,* a letting. *Locatio et conductio,* (sometimes united as a compound word, *"locatio-conductio,")* a letting and hiring. Inst. 3, 25; Bract. fol. 62, c. 28; Story, Bailm. §§ 8, 368.

CONDUCTOR. In the civil law. A hirer.

CONDUCTOR OPERARUM. In the civil law. A person who engages to perform a piece of work for another, at a stated price.

CONDUCTUS. A thing hired.

CONE. In geology. Area built up by a stream, near the mouth of a canyon of boulders, small stones, gravel, sand and other detritus. Haack v. San Fernando Mission Land Co., 177 Cal. 140, 169 P. 1021, 1022.

CONE AND KEY. In old English law. A woman at fourteen or fifteen years of age may take charge of her house and receive *cone* and *key;* that is, keep the accounts and keys. Cowell. Said by Lord Coke to be *cover* and *keye,* meaning that at that age a woman knew what in her house should be kept under lock and key. 2 Inst. 203.

CONFARREATIO. In Roman law. A sacrificial rite resorted to by marrying persons of high patrician or priestly degree, for the purpose of clothing the husband with the *manus* over his wife; the civil modes of effecting the same thing being *coemptio,* (formal,) and *usus mulieris,* (informal.) Brown.

CONFECTIO. The making and completion of a written instrument. 5 Coke, 1.

CONFEDERACY,

Criminal Law

The association or banding together of two or more persons for the purpose of committing an act or furthering an enterprise which is forbidden by law, or which, though lawful in itself, becomes unlawful when made the object of the confederacy. State v. Crowley, 41 Wis. 284, 22 Am.Rep. 719; Watson v. Navigation Co., 52 How.Prac. (N.Y.) 353. *Conspiracy* is a more technical term for this offense. The act of two or more who combine together to do any damage or injury to another, or to do any unlawful act. Jacob. State v. Crowley, 41 Wis. 284, 22 Am.Rep. 719.

Equity Pleading

An improper combination alleged to have been entered into between the defendants to a bill in equity.

International Law

A league or agreement between two or more independent states whereby they unite for their mutual welfare and the furtherance of their common aims. The term may apply to a union so formed for a temporary or limited purpose, as in the case of an offensive and defensive alliance; but it is more commonly used to denote that species of political connection between two or more independent states by which a central government is created, invested with certain powers of sovereignty, (mostly external,) and acting upon the several component states as its units, which, however, retain their sovereign powers for domestic purposes and some others. See Federal Government.

CONFEDERATION. A league or compact for mutual support, particularly of princes, nations, or states. Such was the colonial government during the Revolution.

CONFERENCE. A meeting of several persons for deliberation, for the interchange of opinion, or for the removal of differences or disputes. Thus, a meeting between a counsel and solicitor to advise on the cause of their client.

In the practice of legislative bodies, when the two houses cannot agree upon a pending measure, each appoints a committee of "conference," and the committees meet and consult together for the purpose of removing differences, harmonizing conflicting views, and arranging a compromise which will be accepted by both houses.

French Law

A concordance or identity between two laws or two systems of laws.

International Law

A personal meeting between the diplomatic agents of two or more powers, for the purpose of making statements and explanations that will obviate the delay and difficulty attending the more formal conduct of negotiations.

CONFESS. To admit as true; to assent to; to concede. Guydon v. Taylor, 115 Ind.App. 685, 60 N.E.2d 750, 751. To admit the truth of a charge or accusation. Usually spoken of charges of tortious or criminal conduct.

CONFESSING ERROR. A plea to an assignment of error, admitting the same.

CONFESSIO. Lat. A confession. Confessio *judicio,* a confession made in or before a court.

CONFESSIO FACTA IN JUDICIO OMNI PROBATIONE MAJOR EST. A confession made in court is of greater effect than any proof. Jenk. Cent. 102.

CONFESSION. In criminal law. A voluntary statement made by a person charged with the commission of a crime or misdemeanor, communicated to another person, wherein he acknowledges himself to be guilty of the offense charged, and discloses the circumstances of the act or the share and participation which he had in it. Spicer v. Com., 21 Ky.L.Rep. 528, 51 S.W. 802. State v. Gibson, 69 N.D. 70, 284 N.W. 209, 214, 215, 219; Sango v. State, 52 Okl.Cr. 359, 5 P.2d 400, 401; Edwards v. State, Okl.Cr.App., 288 P. 359, 361. Also the act of a prisoner, when arraigned for a crime or misdemeanor, in acknowledging and avowing that he is guilty of the offense charged.

"Confession" comprises whole criminal charge; whereas, "admission" relates only to particular fact or circumstance covered thereby. State v. Davis, 212 Iowa 131, 235 N.W. 759, 761.

Classification

Confessions are divided into judicial and extrajudicial. The former are such as are made before a magistrate or court in the due course of legal proceedings; they include confessions made in preliminary examinations before magistrates. Mularkey v. State, 199 Wis. 269, 225 N.W. 933, 934. The latter are such as are made by a party elsewhere than in court or before a magistrate, 1 Greenl. Ev. § 216, State v. Corey, 182 Minn. 48, 233 N.W. 590, 591; Foster v. State, 79 Okl.Cr. 183, 152 P.2d 929, 932; Louette v. State, 152 Fla. 495, 12 So.2d 168, 172; whether to an official or non-official person, Prather v. State, 76 Okl.Cr. 385, 137 P.2d 249, 252. One made by the party out of court, or to any person, official or otherwise, when made not in the course of a judicial examination or investigation. State v. Stevenson, 98 Or. 285, 193 P. 1030, 1032.

An *implied* confession is where the defendant, in a case not capital, does not plead guilty but indirectly admits his guilt by placing himself at the mercy of the court and asking for a light sentence. 2 Hawk. P. C. p. 469; State v. Conway, 20 R.I. 270, 38 A. 656. An *indirect* confession is one inferred from the conduct of the defendant. An *involuntary* confession is one induced by hope, promise, fear, violence, torture, or threat. Lyons v. State, 77 Okl.Cr. 197, 138 P.2d 142, 148; Lyons v. State, 140 P.2d 248. People v. Tielke, 259 Ill. 8$, 102 N.E. 229, 231. A *naked* confession is an admission of the guilt of the party, but which is not supported by any evidence of the commission of the crime. A *relative* confession, in the older criminal law of England, "is where the accused confesseth and appealeth others thereof, to become an approver," (2 Hale, P. C. c. 29,) or in other words to "turn king's evidence." This is now obsolete, but something like it is practiced in modern law, where one of the persons accused or supposed to be involved in a crime is put on the witness stand under an implied promise of pardon. State v. Willis, 71 Conn. 293, 41 A. 820. A *simple* confession is merely a plea of guilty. State v. Willis, 71 Conn. 293, 41 A. 820. A *voluntary* confession is one made spontaneously by a person accused of crime, free from the influence of any extraneous disturbing cause, and in particular, not influenced, or extorted by violence, threats, or promises. State v. Clifford, 86 Iowa, 550, 53 N.W. 299, 41 Am.St.Rep. 518.

No confession induced by official threat of prosecution is voluntary. Cannan v. U. S., C.C.A.Tex., 19 F.2d 823, 824; State v. Dolan, 86 N.J.L. 192, 90 A. 1034, 1035.

It need not be spontaneous nor proceed wholly at maker's suggestion, but may be set in motion by external causes, so long as such influences are not what the law deems improper. People v. Vinci, 295 111. 419, 129 N.E. 193, 195.

For *extrajudicial* confession, see, also, the title Extrajudicial.

CONFESSION AND AVOIDANCE. A plea in confession and avoidance is one which avows and confesses the truth of the averments of fact in the declaration, either expressly or by implication, but then proceeds to allege new matter which tends to deprive the facts admitted of their ordinary legal effect, or to obviate, neutralize, or *avoid* them. Bavarian Brewing Co. v. Retkowski, 113 A. 903, 907, 1 W.W.Flarr. (Del.) 225; Brown v. Jones, 137 Or. 520, 3 P.2d 768, 769.

CONFESSION OF DEFENSE. In English practice. Where defendant alleges a ground of defense arising since the commencement of the action, the plaintiff may deliver confession of such defense and sign judgment for his costs up to the time of such pleading, unless it be otherwise ordered. Jud. Act 1875, Ord. XX, r. 3.

CONFESSION OF JUDGMENT. See Judgment.

CONFESSO, BILL TAKEN PRO. In equity practice. An order which the court of chancery makes when the defendant does not file an answer, that the plaintiff may take such a decree as the case made by his bill warrants.

CONFESSOR. An ecclesiastic who receives auricular confessions of sins from persons under his spiritual charge, and pronounces absolution upon them. The secrets of the confessional are not privileged communications at common law, but this has been changed by statute in some states. See 1 Greenl. Ev. §§ 247, 248.

CONFESSORIA ACTIO. Lat. In the civil law. An action for enforcing a servitude. Mackeld. Rom. Law, § 324.

CONFESSUS IN JUDICIO PRO JUDICATO HABETUR, ET QUODAMMODO SUA SENTENTIA 11 Coke, 30. A person confessing his guilt when arraigned is deemed to have been found guilty, and is, as it were, condemned by his own sentence.

CONFIDE. A synonym of the word "trust," and means to put into one's trust or keeping. Burch v. McMillin, Tex., 15 S.W.2d 86, 90.

CONFIDENCE. Trust; reliance; ground of trust. In the construction of wills, this word is considered peculiarly appropriate to create a trust.

"It is as applicable to the subject of a trust, as nearly a synonym, as the English language is capable of. Trust is a confidence which one man reposes in another, and confidence is a trust." Appeal of Coates, 2 Pa. 133.

CONFIDENCE GAME. Obtaining of money or property by means of some trick, device, or swindling operation in which advantage is taken of the confidence which the victim reposes in the swindler. People v. Mutchler, 309 Ill. 207, 140 N.E. 820, 822, 35 A.L.R. 339; Roll v. People, 243 P. 641, 643, 78 Colo. 589; People v. Epstein, 338 Ill. 631, 170 N.E. 678, 679. For distinction between false pretenses and confidence game, see False Pretenses.

One obtaining property by unlawful means, other than by fraudulently obtaining and then abusing victim's confidence, is not guilty of obtaining property by means of "confidence game." Bomareto v. People, 111 Colo. 99, 137 P.2d 402, 404.

CONFIDENTIAL. Intrusted with the confidence of another or with his secret affairs or purposes; intended to be held in confidence or kept secret.

CONFIDENTIAL COMMUNICATIONS. See Communication.

CONFIDENTIAL CREDITOR. This term has been applied to the creditors of a failing debtor who furnished him with the means of obtaining credit to which he was not entitled, involving in loss the unsuspecting and fair-dealing creditors. Gay v. Strickland, 112 Ala. 567, 20 So. 921.

CONFIDENTIAL RELATION. A fiduciary relation. These phrases are used as convertible terms. It is a peculiar relation which exists between client and attorney, principal and agent, principal and surety, landlord and tenant, parent and child, guardian and ward, ancestor and heir, husband and wife, trustee and *cestui que trust,* executors or administrators and creditors, legatees, or distributees, appointer and appointee under powers, and partners and part owners. In these and like cases, the law, in order to prevent undue advantage from the unlimited confidence or sense of duty which the relation naturally creates, requires the utmost degree of good faith in all transactions between the parties. Shell Petroleum Corporation v. Pratt, D.C.Kan., 22 F.Supp. 304, 305, 306. It is not confined to any specific association of parties. It appears when the circumstances make it certain that the parties do not deal on equal terms, but on the one side there is an overmastering influence, or, on the other, weakness, dependence, or trust, justifiably reposed. The mere existence of kinship does not, of itself, give rise to such relation. In re Null's Estate, 302 Pa. 64, 153 A. 137. It covers every form of relation between parties wherein confidence is reposed by one in another, and former relies and acts upon representations of the other and is guilty of no derelictions on his own part. Peckham v. Johnson, Tex.Civ.App., 98 S.W.2d 408, 416.

The term "confidential relations," within the exception to the rule that misrepresentations of law will not work an estoppel, is not confined to the strict fiduciary relationship existing between those having definite, well-recognized legal relations of trust and confidence, but extends to every possible case in which a fiduciary relation exists as a fact, though it may be a moral, social, domestic, or merely personal relation, and need not be a legal one. Robbins v. Law, 48 Cal.App. 555, 192 P. 118, 120; Hitchcock v. Tackett, 208 Ky. 803, 272 S.W. 52, 54.

CONFINEMENT. Confinement may be by either a moral or a physical restraint, by threats of violence with a present force, or by physical restraint of the person. Ex parte Snodgrass, 43 Tex. Cr.R. 359, 65 S.W. 1061.

Restraint by sickness in childbirth; lying-in for delivery of child, or possibly because of advanced pregnancy. Rose v. Commonwealth Beneficial Ass'n, 86 A. 673, 674, 4 Boyce (Del.) 144.

Solitary Confinement

See Solitary Confinement.

CONFIRM. To complete or establish that which was imperfect or uncertain; to ratify what has been done without authority or *insufficiently.* Railway Co. v. Ransom, 15 Tex.Civ.App. 689, 41 S.W. 826. Vermont Shade Roller Co. v. Burlington Traction Co., 102 Vt. 489, 150 A. 138, 142. To make firm or certain; to give new assurance of truth or certainty; to put past doubt. State ex rel. Sherrill v. Milam, 113 Fla. 491, 153 So. 100.

CONFIRMARE EST ID FIRMUM FACERE QUOD PRIUS INFIRMUM FUIT. Co. Litt. 295. To confirm is to make firm that which was before infirm.

CONFIRMARE NEMO POTEST PRIUS QUAM JUS EI ACCIDERIT. No one can confirm before the right accrues to him. 10 Coke, 48.

CONFIRMAT USUM QUI TOLLIT ABUSUM. He confirms the use [of a thing] who removes the abuse [of it]. Moore, 764.

CONFIRMATIO. The conveyance of an estate, or the communication of a right that one hath in or unto lands or tenements, to another that hath the possession thereof, or somo other estate therein, whereby a voidable estate is made sure and unavoidable, or whereby a particular estate is increased or enlarged. Shep. Touch. 311; 2 Bl. Comm. 325.

CONFIRMATIO CHARTARUM. Lat. Confirmation of the charters. A statute passed in the 25 Edw. I., whereby the Great Charter is declared to be allowed as the common law; all judgments contrary to it are declared void; copies of it are ordered to be sent to all cathedral churches and read twice a year to the people; and sentence of excommunication is directed to be as constantly denounced against all those that, by word or deed or counsel, act contrary thereto or in any degree infringe it. 1 Bl.Comm. 128.

CONFIRMATIO CRESCENS. An enlarging confirmation; one which enlarges a rightful estate. Shep. Touch. 311.

CONFIRMATIO DIMINUENS. A diminishing confirmation. A confirmation which tends and serves to diminish and abridge the services where-

by *a* tenant doth hold, operating as a release of part of the services. Shep. Touch. 311.

CONFIRMATIO PERFICIENS. A confirmation which makes valid a wrongful and defeasible title, or makes a conditional estate absolute. Shep. Touch. 311.

CONFIRMATIO EST NULLA UBI DONUM PRIECEDENS EST INVALIDUM. Moore, 764; Co. Litt. 295. Confirmation is void where the preceding gift is invalid.

CONFIRMATIO OMNES SUPPLET DEFECTUS, LICET ID QUOD ACTUM EST AB INITIO NON VALUIT. Co. Litt. 295b. Confirmation supplies all defects, though that which had been done was not valid at the beginning.

CONFIRMATION. A contract or written memorandum thereof, by which that which was infirm, difficult of proof, void, imperfect, or subject to be avoided is ratified, rendered valid and binding, made firm and unavoidable. Schifferdecker v. Busch, 225 N.Y.S. 106, 111, 130 Misc, 625.

It implies a deliberate act, intended to renew and ratify a transaction known to be voidable. Bauer v. Dotterer, 202 Ark. 1055, 155 S.W.2d 54, 57.

A conveyance of an estate or right *in esse,* whereby a voidable estate is made sure and unavoidable, or whereby a particular estate is increased. Co. Litt. 295b. Beetem v. Garrison, 129 Md. 664, 99 A. 897, 900.

English Ecclesiastical Law

The ratification by the archbishop of the election of a bishop by dean and chapter under the king's letter missive prior to the investment and consecration of the bishop by the archbishop. 25 Hen. VIII. c. 20.

CONFIRMATION OF SALE. The confirmation of a judicial sale by the court which ordered it is a signification in some way (usually by the entry of an order) of the court's approval of the terms, price, and conditions of the sale. Johnson v. Cooper, 56 Miss. 618; Hyman v. Smith, 13 W.Va. 765.

CONFIRMAVI. Lat. I have confirmed. The emphatic word in the ancient deeds of confirmation. Fleta, lib. 3, c. 14, § 5.

CONFIRMEE. The grantee in a deed of confirmation.

CONFIRMOR. The grantor in a deed of confirmation.

CONFISCABLE. Capable of being confiscated or suitable for confiscation; liable to forfeiture. Camp v. Lockwood, 1 Dall. (Pa.) 393, 1 L.Ed. 194.

CONFISCARE. In civil and old English law. To confiscate; to claim for or bring into the fist, or treasury. Bract. fol. 150.

CONFISCATE. To appropriate property to the use of the state. To adjudge property to be forfeited to the public treasury; to seize and condemn private forfeited property to public use. City of Portsmouth v. Public Utilities Commission, 108 Ohio St. 272, 140 N.E. 604, 606; Moscow Fire Ins. Co. of Moscow, Russia, v. Bank of New York & Trust Co., 294 N.Y.S. 648, 663, 161 Misc. 903.

Formerly, it appears, this term was used as synonymous with "forfeit," but at present the distinction between the two terms is well marked. Confiscation supervenes upon forfeiture. The person, by his act, forfeits his property; the state thereupon appropriates it, that is, confiscates it. Hence, to confiscate property implies that it has first been forfeited; but to forfeit property does not necessarily imply that it will be confiscated.

CONFISCATEE. One whose property has been seized and sold under a confiscation act, *e. g.,* for unpaid taxes. See Brent v. New Orleans, 41. La. Ann. 1098, 6 So. 793.

CONFISCATION, The act of confiscating; or of condemning and adjudging to the public treasury.

"Confiscation" is to be distinguished from "condemnation" as prize. The former is the act of the sovereign against a rebellious subject; the latter is the act of a belligerent against another belligerent. Confiscation may be effected by such means, summary or arbitrary, as the sovereign, expressing its will through lawful channels, may please to adopt. Condemnation as prize can only be made in accordance with principles of law recognized in the common jurisprudence of the world. Both are proceedings *in rem,* but confiscation recognizes the title of the original owner to the property, while in prize the tenure of the property is qualified, provisional, and destitute of absolute ownership. Winchester v. U. S., 14 Ct.C1. 48.

CONFISCATORY RATES. For utility are rates which do not afford net return sufficient to preserve utility's property and to attract capital necessary to enable utility to discharge its public duties. Wichita Gas Co. v. Public Service Commission of Kansas, D.C.Kan., 2 F.Supp. 792, 799. Rates which do not afford a reasonable return on value of property at time it is used in public service. State v. Tri-State Telephone and Telegraph Co., 204 Minn. 516, 284 N.W. 294, 305.

CONFISCATION ACTS. Certain acts of congress, enacted during the progress of the civil war (1861 and 1862) in the exercise of the war powers of the government and meant to strengthen its hands and aid in suppressing the rebellion, which authorized the seizure, condemnation, and forfeiture of "property used for insurrectionary purposes." Semmes v. U. S., 91 U.S. 27, 23 L.Ed. 193.

CONFISCATION CASES. The name given to a group of fifteen cases decided by the United States supreme court in 1868, on the validity and construction of the confiscation acts of congress. Reported in 7 Wall. 454, 19 L.Ed. 196.

CONFISK. An old form of *confiscate.*

CONFITENS REUS. An accused person who admits his guilt.

CONFLICT OF LAWS. Inconsistency or difference between the municipal laws of different states or countries, arising in the case of persons who have acquired rights or a *status,* or made contracts, or incurred obligations, within the territory of two or more jurisdictions. Hence, that branch of jurisprudence, arising from the diver-

sity of the laws of different nations, states or jurisdictions, in their application to rights and remedies, which reconciles the inconsistency, or decides which law or system is to govern in the particular case, or settles the degree of force to be accorded to the law of another jurisdiction, (the acts or rights in question having arisen under it,) either where it varies from the domestic law, or where the domestic law is silent or not exclusively applicable to the case in point. In this sense it is often called "private international law," a term adopted by Westlake, by Woolsey, Internatl. Law (5th Ed.) § 73, and others, and characterized as "handy and manageable," but at bottom inaccurate, by Dicey, Conflict of Laws, Moore's Ed. 12, who points out that the defect of the name "Conflict of Laws" is that the supposed conflict is fictitious and never really takes place, and that the expression has the further radical defect of concealing from view the circumstance that the question by the law of what country a given transaction shall be governed is often too plain to admit of doubt. If, he says, the term applies to the conflict in the mind of a judge as to which of two systems of law should govern a given case, this amounts simply to saying that the term "conflict of laws" may be used as an inaccurate equivalent for the less objectionable phrase "choice of laws." Taylor, Jurisprudence, 611, after considering the opinion of many writers, concludes that the term "private international law" is subject to many objections. Holland, Jurisprudence, 410, considers it "wholly indefensible," as does Gray, Nature, etc., of the Law, 124. Pollock, First Book of Jurispr. 99, prefers the German term—Internationales Privatrecht.

CONFLICT OF PRESUMPTIONS. In this conflict certain rules are applicable, viz.: (1) Special take precedence of general presumptions; (2) constant of casual ones; (3) presume in favor of innocence; (4) of legality; (5) of validity; and, when these rules fail, the matter is said to be at large. Brown.

CONFLICTING EVIDENCE. It has been said that there is not, in a legal sense, a conflict of evidence unless there is a possibility that men of ordinary reason and fairness would feel justified in drawing different conclusions from the evidence before them. Seeley v. Osborne, 220 N.Y. 416, 116 N.E. 97.

CONFORMITY. Correspondence in form, manner, or use; agreement; harmony; congruity. Reasonover v. Reasonover, 122 Tex. 512, 58 S.W. 2d 817, 819.

English Ecclesiastical Law

Adherence to the doctrines and usages of the Church of England.

CONFORMITY ACT, or STATUTE. A term used to designate Act June 1, 1872, c. 255, § 5, 17 Stat. 197, whence was derived Rev. St. U. S. § 914 providing that the practice, pleadings, and forms and modes of proceeding in civil causes, other than equity and admiralty causes, in the federal district courts shall conform, as near as may be, to those existing in like causes in the courts of the state within which such district courts are held. Since the adoption of the Federal Rules of Civil Procedure, 28 U.S.C.A., the Conformity Act is no longer effective. De Rosmo v. Feeny, 1941, 38 F. Supp. 834; Hydraulic Press Mfg. Co. v. Williams, White & Co., C.C.A.I11.1947, 165 F.2d 489.

CONFORMITY, BILL OF. See Bill of Conformity.

CONFRAIRIE. Fr. In old English law. A fraternity, brotherhood, or society. Cowell.

CONFRERES. Brethren in a religious house; fellows of one and the same society. Cowell.

CONFRONTATION. In criminal law, the act of setting a witness face to face with the prisoner, in order that the latter may make any objection he has to the witness, or that the witness may identify the accused. State v. Behrman, 114 N.C. 797, 19 S.E. 220, 25 L.R.A. 449.

The constitutional right of confrontation does not mean merely that witnesses are to be made visible to the accused, but imports the constitutional privilege to croois-examine them. State v. Crooker, 123 Me. 310, 122 A. 865, 866, 33 A.L.R. 821.

CONFUSIO. In the civil law. The inseparable intermixture of property belonging to different owners; it is properly confined to the pouring together of fluids, but is sometimes also used of a melting together of metals or any compound formed by the irrecoverable commixture of different substances.

It is distinguished from *commixtion* by the fact that *in* the latter case a separation may be made, while *in* a *case* of *confusio* there cannot be. 2 Bl.Comm. 405.

CONFUSION. This term, as used in the civil law and in compound terms derived from that source, means a blending or intermingling, and is equivalent to the term "merger" as used at common law. Palmer v. Burnside, 1 Woods, 182 Fed. Cas. No. 10,685.

CONFUSION OF BOUNDARIES. The title of that branch of equity jurisdiction which relates to the discovery and settlement of conflicting, disputed, or uncertain boundaries.

CONFUSION OF DEBTS. A mode of extinguishing a debt, by the concurrence in the same person of two qualities or adverse rights to the same thing which mutually destroy each other. This may occur in several ways, as where the creditor becomes the heir of the debtor, or the debtor the heir of the creditor, or either accedes to the title of the other by any other mode of transfer. Woods v. Ridley, 11 Humph. (Tenn.) 198.

CONFUSION OF GOODS. The inseparable intermixture of property belonging to different owners; properly confined to the pouring together of fluids, but used in a wider sense to designate any indistinguishable compound of elements belonging to different owners. The term "confusion" is applicable to a mixing of chattels of one and the same general description, differing thus from "accession," which takes place where various ma-

terials are united in one product. Confusion of goods arises wherever the goods of two or more persons are so blended as to have become undistinguishable. 1 Schouler, Pers. Prop. 41. Barker v. Stearns Coal & Lumber Co., 291 Ky. 184, 163 S.W.2d 466, 471.

CONFUSION OF RIGHTS. A union of the qualities of debtor and creditor in the same person. The effect of such a union is, generally, to extinguish the debt. 1 Salk. 306; Cro. Car. 551; 1 Ld. Raym. 515. 5 Term 381; Comyns, Dig. *Baron et Feme* (D) ; Baylor University v. Bradshaw, Tex. Civ.App., 52 S.W.2d 1094, 1101.

CONFUSION OF TITLES. A civil-law expression, synonymous with "merger," as used in the common law, applying where two titles to the same property unite in the same person. Palmer v. Burnside, 1 Woods, 179, Fed. Cas, No. 10,685.

CONFUTE. To prove to be false, defective, or invalid. Wiley v. Baker, 219 Mich. 629, 190 N.W. 273, 278.

CONGA. Fr. In French law. Permission, leave, license; a passport or clearance to a vessel; a permission to arm, equip, or navigate a vessel.

CONGA D'ACCORDER. Leave to accord. A permission granted by the court, in the old process of levying a fine, to the defendant to agree with the plaintiff. *Termes de* la *Ley;* Cowell. See Licentia Concordandi; 2 Bla.Comm. 350.

CONGA D'EMPARLER. Leave to imparl. The privilege of an imparlance, *(licentia loquendi.)* 3 Bl.Comm. 299.

CONGA D'ESLIRE. Also spelled conge d'elire, conge dèlire. Cowell; *Termes de la Ley;* 1 Bla. Comm. 379, 382. A permission or license from the British sovereign to a dean and chapter to elect a bishop, in time of vacation; or to an abbey or priory which is of royal foundation, to elect an abbot or prior.

CONGEABLE. L. Fr. Lawful; permissible; allowable. "Disseisin is properly where a man entereth into any lands or tenements where his entry is not *congeable,* and putteth out him that hath the freehold." Litt. § 279. See Ricard v. Williams, 7 Wheat. 107, 5 L.Ed. 398.

CONGILDONES. In Saxon law. Fellow-members of a guild.

CONGIUS. An ancient measure containing about a gallon and a pint. Cowell.

CONGREGATE. To come together; to assemble; to meet. Board of Health of City of Paterson v. Clayton, 93 N.J.L. 64, 106 A. 813, 814.

CONGREGATION. An assembly or gathering; specifically, an assembly or society of persons who together constitute the principal supporters of a particular parish, or habitually meet at the same church for religious exercises. Laird v. State, 69 Tex.Cr.R. 553, 155 S.W. 260, 262.

Ecclesiastical Law

Certain bureaus at Rome, where ecclesiastical matters are attended to.

CONGREGATIONAL SYSTEM OF CHURCH ORGANIZATION. Where the local organization is the governing body and is sufficient unto itself. Doughty v. Herr, 97 Ind.App. 427, 185 N.E. 657, 658.

CONGRESS. In International Law. An assembly of envoys, commissioners, deputies, etc., from different sovereignties who meet to concert measures for their common good, or to adjust their mutual concerns.

In American Law. The legislative assembly of the United States, composed of the senate and house of representatives *(q. v.).* U. *S.* Const. art. 1, § 1.

CONGRESSMAN. Strictly, a member of the Congress of the United States. But there is a strong tendency in popular usage to apply this term only to a member of the House of Representatives, as distinguished from a senator. State v. Kopriva, 49 N.D. 1040, 194 N.W. 704, 705.

CONGRESSUS. The extreme practical test of the truth of a charge of impotence brought against a husband by a wife. It is now disused. Causes Celêbres, 6, 183.

CONJECTIO. In the civil law of evidence. A throwing together. Presumption; the putting of things together, with the inference drawn therefrom.

CONJECTIO CAUSE. In the civil law. A statement of the case. A brief synopsis of the case given by the advocate to the judge in opening the trial. Calvin.

CONJECTURAL CHOICE, RULE OF. Where all theories of causation rest only on conjecture, no jury question is presented. Cummings v. Grand Trunk Western R. Co., 127 N.W.2d 842, 844, 372 Mich. 695.

CONJECTURE. A slight degree of credence, arising from evidence too weak or too remote to cause belief. Weed v. Scofield, 73 Conn. 670, 49 A. 22-, 1 Mascardus, *De Prob.* qust. 14, n. 14. Supposition or surmise. The idea of a fact, suggested by another fact; as a possible cause, concomitant, or result. Burrill, Circ. Ev. 27. An idea or notion founded on a probability without any demonstration of its truth; an idea or surmise inducing a slight degree of belief founded upon some possible, or perhaps probable fact of which there is no positive evidence. Oklahoma City v. Wilcoxson, 173 Okl. 433, 48 P.2d 1039, 1043. An explanation consistent with but not deducible as a reasonable inference from known facts or conditions. Southern Ry. Co. v. Dickson, 211 Ala. 481, 100 So. 665, 669. In popular use, synonymous with "guess." Fedorawicz v. Citizens' Electric Illuminating Co., 246 Pa. 141, 92 A. 124, 125.

Also, the bringing together of the circumstances, as well as the result obtained. Reynolds v. Maryland Casualty Co., 274 Mo. 83, 201 S.W. 1128, 1133.

CONJOINT ROBBERY. Where the act is committed by two or more persons. Patterson V. State, 78 Okl.Cr. 244, 147 P.2d 179, 184.

CONJOINTS. Persons married to each other. Story, Confl. Laws, § 71; Wolffius, *Droit de la Nat.* § 858.

CONJUDEX. In old English law. An associate judge. Bract. 403.

CONJUGAL. Of or belonging to marriage or the married state; suitable or appropriate to the married state or to married persons; matrimonial; connubial. Swanson v. Swanson, 20 A.2d 617, 618, 128 Conn. 128, 135 A.L.R. 849.

CONJUGAL RIGHTS. Matrimonial rights; the right which husband and wife have to each other's society, comfort, and affection.

CONJUGIUM. One of the names of marriage, among the Romans. Tayl. Civil Law, 284.

CONJUNCT. In Scotch law. Joint.

CONJUNCTA. In the civil law. Things joined together or united; as distinguished from *disjuncta,* things disjoined or separated. Dig. 50, 16, 53.

CONJUNCTIM. Lat. In old English law. Jointly. Inst. 2, 20, 8.

CONJUNCTIM ET DIVISIM. L. Lat. In old English law. Jointly and severally.

CONJUNCTIO. In the civil law. Conjunction; connection of words in a sentence. See Dig. 50, 16, 29, 142.

CONJUNCTIO MARITI ET FEMIN1E EST DE JURE NATURAE. The union of husband and wife is of the law of nature.

CONJUNCTIVE. Connecting in a manner denoting union.

A grammatical term for particles which serve for joining or connecting together. Thus, the word "and" is called a "conjunctive," and "or" a "disjunctive," conjunction.

CONJUNCTIVE DENIAL. Where several material facts are stated conjunctively in the complaint, an answer which undertakes to deny their averments as a whole, conjunctively stated, is called a "conjunctive denial." Doll v. Good, 38 Cal. 287.

CONJUNCTIVE OBLIGATION. See Obligation.

CONJURATIO. In Old English Law. A swearing together; an oath administered to several together; a combination or confederacy under oath. Cowell.

In Old European Law. A compact of the inhabitants of a commune, or municipality, confirmed by their oaths to each other and which was the basis of the commune. Steph. Lect. 119.

CONJURATION. In old English law. A plot or compact made by persons combining by oath to do any public harm. Cowell.

The offense of having conference or commerce with evil spirits, in order to discover some secret, or effect some purpose. Cowell.

Classed by Blackstone with witchcraft, enchantment, and sorcery, but distinguished from each of these by other writers. 4 BI.Comm. 60; Cowell. Cooper v. Livingston, 19 Fla. 693; Mozley & W. Law Diet.

CONJURATOR. In old English law. One who swears or is sworn with others; one bound by oath with others; a compurgator; a conspirator.

CONNECT. To join or fasten together as by something intervening; to associate as in occurrence or in idea; to combine; to unite or link together, as in an electrical circuit; to establish a bond or relation between; to meet or make connections for transference of passengers or change of means of communication. City of Independence v. Board of Com'rs of Montgomery County, 140 Kan. 661, 38 P.2d 105.

CONNECTED. Joined; united by junction, by an intervening substance or medium, by dependence or relation, or by order in a series. State v. Patterson, 95 S.C. 463, 79 S.E. 309, 310.

With reference to buildings, the term does not generally denote such a close union as is implied by the word "attached" or "annexed," but rather signifiez the connection effected by a flume; Plattsburg Gas & Electric Co. v. Miller, 206 N.Y.S. 42, 45, 123 Misc. 651; or by piping or telephone connections; Williams Mfg. Co. v. Insurance Co. of North America, 93 Vt. 161, 106 A. 657, 659.

A counterclaim, to be "connected" with the subject of the action, must be directly connected, so that the parties could be supposed to have foreseen and contemplated it in their mutual acts. Haberle-Crystal Spring Brewing Co. v. Handrahan, 165 N.Y.S. 251, 255, 100 Misc. 163; Placerville Gold Mining Co. v. Beal, 168 Cal. 682, 144 P. 748, 749.

As used in the Act to Regulate Commerce (Act Feb. 4, 1887, c. 104, § 15, 24 Stat. 384), as amended by Act June 29, 1906, c. 3591, § 4, 34 Stat. 589 (49 USCA § 15), "connected with" transportation means "a part of" transportation. New York Cent. & H. R. R. Co. v. General Electric Co., 146 N.Y.S. 322, 327, 83 Misc. 529.

CONNECTION. The state of being connected or joined; union by junction, by an intervening substance or medium, by dependence or relation, or by order in a series. State v. Patterson, 95 S.C. 463, 79 S.E. 309, 310. Annernen v. Penn, Cust. & Pat.App., 69 F.2d 653, 654.

A contract for a connection between railroads means a physical joining of the rails so as to permit trains to pass from one set of rails to the other. Philip A. Ryan Lumber Co. v. Ball, Tex.Civ.App., 197 S.W. 1037, 1038. See, also, State v. Babcock, 161 Minn. 80, 200 N.W. 843, 844; Raynor v. New York & L. I. Traction Co., 149 N.Y.S. 151, 155, 86. Misc. 201.

CONNECTIONS. Relations by blood or marriage, but more commonly the relations of a person with whom one is connected by' marriage. In this sense, the relations of a wife are "connections" of her husband. The term is vague and indefinite. See Storer v. Wheatley, 1 Pa. 507.

CONNEXITE. In French law. This exists when two actions are pending which, although not identical as in *lis pendens,* are so nearly similar in, object that it is expedient to have them both adjudicated upon by the same judges. Arg. *Fr.* Merc. Law, 553.

CONNIVANCE. The secret or indirect consent or permission of one person to the commission of an unlawful or criminal act by another. State v. Gesell, 124 Mo. 531, 27 S.W. 1101. A winking at; voluntary blindness; an intentional failure to discover or prevent the wrong; forbearance or passive consent. Pierce v. Crisp, 260 Ky. 519, 86 S. W.2d 293, 296.

The corrupt consent of one party to the commission of the acts of the other constituting the cause of divorce. Dennis v. Dennis, 36 A. 34, 68 Conn. 186, 34 L.R.A. 449, 57 Am.St.Rep. 95; Manville v. Manville, Mo.App., 81 S.W.2d 382, 388.

A corrupt intent is essential. Ratcliff v. Ratcliff, 221 Mo.App. 944, 288 S.W. 794, 796. But see Leavitt v. Leavitt, 229 Mass. 196, 118 N.E. 262, and 33 L.J.Mat.Cas. 161.

Connivance differs from condonation, though the same legal consequences may attend it. Connivance necessarily involves criminality on the part of the individual who connives; condonation may take place without imputing the slightest blame to the party who forgives the injury. Connivance must be the act of the mind before the offense has been committed; condonation is the result of a determination to forgive an injury which was not known until after it was inflicted. Turton v. Turton, 3 Hagg.Eccl. 350.

Connivance differs, also, from collusion ; the former is generally collusion for a particular purpose, while the latter may exist without connivance. 3 Hagg.Eccl. 130.

CONNIVE. To co-operate secretly with, or to have a secret or clandestine understanding with. People v. Munday, 293 Ill. 191, 127 N.E. 364, 368. To take part or co-operate privily with another, to aid or abet. People v. Munday, 215 Ill.App. 356, 377. To look upon with secret favor; it implies both knowledge and assent, either active or passive. State v. Furth, 82 Wash. 665, 144 P. 907, 910.

CONNOISSEMENT. In French law. An instrument, signed by the master of a ship or his agent, containing a description of the goods loaded on a ship, the persons who have sent them, the persons to whom they were sent, and the undertaking to transport them;—similar to the English and American bill of lading. Guyot, *Repert. Univ.; Ord. de la Marine,l.* 3, t. 3, art. 1.

CONNUBIUM. In the civil law. Marriage. Among the Romans, a lawful marriage as distinguished from "concubinage" (q. v.), an inferior marriage.

CONOCIAMENTO. In Spanish law. A recognizance. White, New Recop. b. 3, tit. 7, c. 5, § 3.

CONOCIMIENTO. In Spanish law. A bill of lading. In the Mediterranean ports it is called "poliza de *cargamiento."*

CONPOSSESSIO. In modern civil law. A joint possession. Mackeld. ' Rom. Law, § 245.

CONQUEREUR. In Norman and old English law. The same as "conqueror" *(q. v.)* .

CONQUEROR. In old English and Scotch law. The first purchaser of an estate; he who first brought an estate into his family, or into the family owning it. 2 Bl.Comm. 242, 243.

CONQUEST. In feudal law. Conquest; acquisition by purchase; any method of acquiring the ownership of an estate other than by descent. Also an estate acquired otherwise than by inheritance.

In international law. The acquisition of the sovereignty of a country by force of arms, exercised by an independent power which reduces the vanquished to the submission of its empire. Castillero v. U. S., 2 Black, 109, 17 L.Ed. 360; American Ins. Co. v. Canter, 1 Pet. 511, 7 L.Ed. 242.

In Scotch law. Purchase. Bell.

CONQUESTOR. Conqueror. The title given to William of Normandy.

CONQUETS. In French law. The name given to every acquisition which the husband and wife, jointly or severally, make during the conjugal community. Thus, whatever is acquired by the husband and wife, either by his or her industry or good fortune, inures to the extent of one-half for the benefit of the other. Merl. Repert. "Con*que't" ;* Merl. *Quest., "Conquet."* Picotte v. Cooley, 10 Mo. 312. In Louisiana, these gains are called *acqudts.*

CONQUISITIO. In feudal and old English law. Acquisition. 2 Bl.Comm. 242.

CONQUISITOR. In feudal law. A purchaser, acquirer, or conqueror. 2 Bl.Comm. 242, 243.

CONSANGUINEUS. Lat. A person related by blood; a person descended from the same common stock.

CONSANGUINEUS EST QUASI EODEM SANGUINE NATUS. Co. Litt. 157. A person related by consanguinity is, as it were, sprung from the same blood.

CONSANGUINEUS FRATER. In civil and.feudal law. A half-brother by the father's side, as distinguished from *frater uterinus,* a brother by the mother's side. 2 Bla.Comm. 231.

CONSANGUINITY. Kinship; blood relationship; the connection or relation of persons descended from the same stock or common ancestor. 2 Bl. Comm. 202; Rector v. Drury, 3 Pin. (Wis.) 298; Sweezey v. Willis, 1 Brad.Surr.R. (N.Y.) 495.

Consanguinity is distinguished from "affinity," which is the connection existing in consequence of a marriage, between each of the married persons and the kindred of the other. Sizemore v. Commonwealth, 210 Ky. 637, 276 S.W. 524, 525.

Lineal and Collateral Consanguinity

Lineal consanguinity is that which subsists between persons of whom one is descended in a direct line from the other, as between son, father, grandfather, great-grandfather, and so upwards in the direct ascending line; or between son, grandson, great-grandson, and so downwards in the direct descending line. Collateral consanguinity is that which subsists between persons who have the same ancestors, but who do not descend (or ascend) one from the other. Thus, father and

son are related by lineal consanguinity, uncle and nephew by collateral consanguinity. 2 Bl.Comm, 203; Capps v. State, 87 Fla. 388, 100 So. 172, 173.

CONSCIENCE. The moral sense; the faculty of judging the moral qualities of actions, or of discriminating between right and wrong; particularly applied to one's perception and judgment of the moral qualities of his own conduct, but in a wider sense, denoting a similar application of the standards of morality to the acts of others. The sense of right and wrong inherent in every person by virtue of his existence as a social entity; good conscience being a synonym of equity. Van Graafieland v. Wright, 286 Mo. 414, 228 S.W. 465, 469. In law, especially the moral rule which requires probity, justice, and honest dealing between man and man, as when we say that a bargain is "against conscience" or "unconscionable," or that the price paid for property at a forced sale was so inadequate as to "shock the conscience." This is also the meaning of the term as applied to the jurisdiction and principles of decision of courts of chancery, as in saying that such a court is a "court of conscience," that it proceeds "according to conscience," or that it has cognizance of "matters of conscience." See 3 Bl.Comm. 47-56; People v. Stewart, 7 Cal. 143; Miller v. Miller, 187 Pa. 572, 41 A. 277.

As an element of equitable jurisdiction it is not the private opinion of an individual court, but is rather to be regarded as a metaphorical term, designating the common standard of civil right and expediency combined, based upon general principles and limited by established doctrines, to which the court appeals and by which it tests the conduct and rights of suitors. National City Bank of New York v. Gelfert, 284 N.Y. 13, 29 N.E.2d 449, 452.

CONSCIENCE OF THE COURT. When an issue is sent (Alt of chancery to be tried at law, to "inform the conscience of the court," the meaning is that the court is to be supplied with exact and dependable information as to the unsettled or disputed questions of fact in the case, in order that it may proceed to decide it in accordance with the principles of equity and good conscience in the light of the facts thus determined. Watt v. Starke, 101 U.S. 252, 25 L.Ed. 826.

CONSCIENCE, COURTS OF. Courts, not of record, constituted by act of parliament in the city of London, and other towns, for the recovery of small debts; otherwise and more commonly called "Courts of Requests." 3 Steph.Comm. 451.

CONSCIENCE, RIGHT OF. As used in some constitutional provisions, this phrase is equivalent to religious liberty or freedom of conscience. Com. v. Lesher, 17 Serg. & R. (Pa.) 155; State v. Cummings, 36 Mo. 263.

CONSCIENTIA DICITUR A CON ET SCIO, QUASI SCIRE CUM DEO. 1 Coke, 100. Conscience is called from *con* and *scio,* to know, as it were, with God.

CONSCIENTIA REI ALIENI. In Scotch law. Knowledge of another's property; knowledge that a thing is not one's own, but belongs to another. He who has this knowledge, and retains possession, is chargeable with "violent profits."

CONSCIENTIOUS OBJECTOR. One who, by reason of religious training and belief, is conscientiously opposed to participation in war. Selective Training & Service Act of 1940, § 5(g), 50 U.S.C.A. App., § 305(g). U. S. v. Kauten, C.C.A. N.Y., 133 F.2d 703.

One conscientiously opposed on religious grounds to participation in war need not be a member of a religious sect whose creed forbids participation in war to be entitled to classification as a conscientious objector. U. S. v. Bowles, C.C.A.N.J., 131 F.2d 818. It is sufficient if he has a conscientious scruple against war in any form. U. S. ex rel. Phillips v. Downer, C.C.A.N.Y., 135 F.2d 521, 524, 525.

CONSCIENTIOUS SCRUPLE. A conscientious scruple against taking an oath, serving as a juror in a capital case, doing military duty, or the like, is an objection or repugnance growing out of the fact that the person believes the thing demanded of him to be morally wrong, his conscience being the sole guide to his decision; it is thus distinguished from an "objection on principle," which is dictated by the reason and judgment, rather than the moral sense, and may relate only to the propriety or expediency of the thing in question. People v. Stewart, 7 Cal. 143.

CONSCRIPTION. Drafting into the military service of the state; compulsory military service falling upon all male subjects evenly, within or under certain specified ages. Kneedler v. Lane, 45 Pa. 267. Certain classes, however, may be exempt, and drafted men are sometimes released upon furnishing acceptable substitutes or by the payment of a sum of money. Davis, Mil. Law 51.

CONSECRATE. In ecclesiastical law. To dedicate to sacred purposes, as a bishop by imposition of hands, or a church or churchyard by prayers, etc. Consecration is performed by a bishop or archbishop.

CONSECRATIO EST PERIODUS ELECTIONIS; ELECTIO EST PRZEAMBULA CONSECRATIONIS. 2 Rolle, 102. Consecration is the termination of election; election is the preamble of consecration.

CONSECUTIVE. Successive; succeeding one another in regular order. Walsworth v. Casassa, 219 Mass. 200, 106 N.E. 847; to follow in uninterrupted succession. People v. Hirschbein, 60 P.2d 532, 16 Cal.App.2d 458.

CONSEDO. Sp. A term used in conveyances under Mexican law, equivalent to the English word "grant." Mulford v. Le Franc, 26 Cal. 103.

CONSEIL D'ETAT. Council of state. One of the oldest of French institutions, its origin dating back to 1302. It decides or advises upon state questions and measures proposed for legislation, submitted to it by the President of the Republic, by the members of the Cabinet, and by Parliament. Coxe, Manual of French Law.

CONSEIL DE FAMILLE. In French law. A family council. Certain acts require the sanction of

this body. For example, a guardian can neither accept nor reject an inheritance to which the minor has succeeded without its authority, (Code Nap. 461;) nor can he accept for the child a gift *inter* vivos without the like authority, (Code Nap. 463.)

CONSEIL DE PRUDHOMMES. In French law. One of a species of trade tribunals, charged with settling differences between masters and workmen. They endeavor, in the first instance, to conciliate the parties. In default, they adjudicate upon the questions in dispute. Their decisions are final up to 200f. Beyond that amount, appeals lie to the tribunals of commerce. Arg. Fr. Merc. Law, 553.

CONSEIL JUDICIAIRE. In French law. When a person has been subjected to an interdiction on the ground of his insane extravagance, but the interdiction is not absolute, but limited only, the court of first instance, which grants the interdiction, appoints a council, called by this name, with whose assistance the party may bring or defend actions, or compromise the same, alienate his estate, make or incur loans, and the like. Brown.

CONSENSUAL CONTRACT. A term derived from the civil law, denoting a contract founded upon and completed by the mere consent of the contracting parties, without any external formality or symbolic act to fix the obligation.

CONSENSUAL MARRIAGE. Marriage resting simply on consent per verba de prsenti, between competent parties. Such marriage is valid. Fisher v. Fisher, 250 N.Y. 313, 165 N.E. 460, 461, 61 A. L.R. 1523. See, also, Common-law Marriage.

CONSENSUS AD IDEM. An agreement of parties to the same thing; a meeting of minds.

CONSENSUS EST VOLUNTAS PLURIUM AD QUOS RES PERTINET, SIMUL JUNCTA. Lofft, 514. Consent is the conjoint will of several persons to whom the thing belongs.

CONSENSUS FACIT LEGEM. Consent makes the law. (A contract is law between the parties agreeing to be bound by it.) Branch, Princ.

CONSENSUS, NON CONCUBITUS, FACIT NUPTIA S VEL MATRIMONIUM, ET CONSENTIRE NON POSSUNT ANTE ANNOS NUBILES. 6 Coke, 22. Consent, and not cohabitation (or coition), constitutes nuptials or marriage, and persons cannot consent before marriageable years. 1 Bl.Comm. 434; Co. Litt. 33a; Dig. 50, 17, 30. See 10 Cl. & F. 534; Broom, Max. 505.

CONSENSUS TOLLIT ERROREM. Co. Litt. 126. Consent (acquiescence) removes mistake. 2 Inst. 123; Rogers v. Cruger, 7 Johns. (N.Y.) 611; Kuhler v. Hoover, 4 Pa. 335; Wilkinson's Appeal, 65 Pa. 190,

CONSENSUS VOLUNTAS MULTOR UM AD QUOS RES PERTINET, SIMUL JUNCTA. Consent is the united will of several interested in one subject-matter. Davis, 48; Branch, Princ,

CONSENT. A concurrence of wills. Voluntarily yielding the will to the proposition of another; acquiescence or compliance therewith. Twin Ports Oil Co. v. Pure Oil Co., D.C.Minn., 26 F.Supp. 366, 371. Agreement; the act or result of coming into harmony or accord. Glantz v. Gabel, 66 Mont. 134, 212 P. 858, 860.

Consent is an act of reason, accompanied with deliberation, the mind weighing as in a balance the good or evil on each side. 1 Story, Eq.Jur. § 222; Lervick v. White Top Cabs, La.App., 10 So.2d 67, 73. It means voluntary agreement by a person in the possession and exercise of sufficient mentality to make an intelligent choice to do something proposed by another. People v. Kangiesser, 44 Cal. App. 345, 186 P. 388, 389. It supposes a physical power to act, a moral power of acting, and a serious, determined, and free use of these powers. Fonblanque, Eq. b. 1, c. 2, s. 1; *New* Jersey Mfrs' Casualty Ins. Co., 148 A. 790, 791, 106 N.J.L. 238. Consent is implied in every agreement. It is an act unclouded by fraud, duress, or sometimes even mistake. Heine v. Wright, 76 Cal.App. 338, 244 P. 955, 956.

There is a difference between consenting and submitting. Every consent involves a submission; but a mere submission does not necessarily involve consent. 9 Car. & P. 722.

"Consent" is an active acquiescence as distinguished from "assent," meaning a silent acquiescence. People v. Lowe, 205 N.Y.S. 77, 78, 209 App.Div. 498. "Consent" means an active circumstance of concurrence; "assent" is a passive act of concurrence before another does the act charged. Perryman v. State, 63 Ga.App. 819, 12 S.E.2d 388, 390. But the two terms may be used interchangeably. Bartlett v. Sundin, 169 N.Y.S. 391, 393, 182 App.Div. 117.

"Consent" is sometimes synonymous merely with "waiver." Dahlquist v. Denver & R. G. R. Co., 52 Utah, 438, 174 P. 833, 844. See, also, Seegmiller v. Day, C.C.A.Ill., 249 F. 177, 178; Toledo Fence & Post Co. v. Lyons, C.C.A.Ohio, 290 F. 637, 640.

As used in the law of rape "consent" means consent of the will, and submission under the influence of fear or terror cannot amount to real consent. Hallmark v. State, 22 Okl. Cr. 422, 212 P. 322, 328. There must be an exercise of intelligence based on knowledge of its significance and moral quality and there must be a choice between resistance and assent. State v. Schwab, 109 Ohio St. 532, 143 N. E. 29, 31. And if woman resists to the point where further resistance would be useless or until her resistance is overcome by force or violence, submission thereafter is not "consent". People v. Mcllvain, 130 P.2d 131, 135, 55 Cal. App.2d 322.

See Assent.

Consent decree. See Decree.

Consent judgment. See Judgment.

Express Consent. That directly given, either viva *voce* or in writing. It is positive, direct, unequivocal consent, requiring no inference or implication to supply its meaning. Pacific Nat. Agricultural Credit Corporation v. Hagerman, 40 N.M. 116, 55 P.2d 667, 670.

Express or Implied Consent. Under motor vehicle liability insurance law providing that policy should cover any person responsible for operation of insured vehicle with insured's express or implied consent, words "express or implied consent" primarily modify not the word "operation", but the word "responsible", and imply possession of vehicle with consent of owner and responsibility to him. Hurley v. Flanagan, 313 Mass. 567, 48 N. E.2d 621, 624.

Implied Consent. That manifested by signs, actions, or facts, or by inaction or silence, which raise a presumption that the consent has been

given. Avery v. State, 12 Ga.App. 562, 77 S.E. 892. See State v. Horton, 247 Mo. 657, 153 S.W. 1051, 1053; White v. White, 84 N.J.Eq. 512, 95 A. 197, 199.

CONSENT RULE. An entry of record by the defendant, confessing the lease, entry, and ouster by the plaintiff, in an action of ejectment. A superseded instrument, in which a defendant in an action of ejectment specified for what purpose he intended to defend, and undertook to confess not only the fictitious lease, entry, and ouster, but that he was in possession. See Ad.Eject. 233.

CONSENTIBLE LINES. See Line.

CONSENTIENTES ET AGENTES PARI PCENA PLECTENTUR. They who consent to an act, and they who do it, shall be visited with equal punish. ment. 5 Coke 80.

CONSENTIRE MATRIMONIO NON POSSUNT INFRA [ANTE] ANNOS NU'BILES. Parties cannot consent to marriage within the years of marriage, [before the age of consent.] 5 Coke 80; 6 Coke 22.

CONSEQUENCE. The result following in natural sequence from an event which is adapted to produce, or to aid in producing, such result;—the correlative of "cause." Board of Trustees of Firemen's Relief and Pension Fund for City of Tulsa v. Miller, 186 Okl. 586, 99 P.2d 146, 147.

In Consequence of

This phrase has been used as equivalent to fhe words, "in the event of." In re Spalding's Estate, 84 Cal.App. 371, 258 P. 154, 155.

CONSEQUENTLE NON EST CONSEQUENTIA. Bac.Max. The consequence of a consequence exists not.

CONSEQUENTIAL CONTEMPT. The ancient name for what is now known as "constructive" contempt of court. Ex parte Wright, 65 Ind. 508. See Contempt.

CONSEQUENTIAL DAMAGES. See Damages.

CONSEQUENTS. In Scotch law. Implied powers or authorities. Things which follow, usually by implication of law. A commission being given to execute any work, every power necessary to carry it on is implied. 1 Karnes, Eq. 242.

CONSERVATOR. A guardian; protector; preserver.

"When any person having property shall be found to be incapable of managing his affairs, by the court of probate in the district in which he resides, * * * it shall appoint some person to be his *conservator,* who, upon giving a probate bond, shall have the charge of the person and estate of such incapable person." Gen.St.Conn.1875, p. 346, § 1 (Gen.St.1930, § 4815) ; Hutchins v. Johnson, 12 Conn. 376, 30 Am. Dec. 622.

One whose business it is to attend to the enforcement of certain statutes. See Conservators of the Peace, *infra.*

One whose duty requires him to prevent and arrest for breaches of the peace in his presence, but not to arraign and try for them. Marcuchi v. Norfolk & W. Ry. Co., 81 W.Va. 548, 94 S.E. 979, 980.

A delegated umpire or standing arbitrator, chosen to compose and adjust difficulties arising between two parties. Cowell.

CONSERVATOR TRUCIS. Lat. An official appointed under an English act of 1414 passed to prevent breaches of truces made, or of safe conducts granted, by the king. 2 Holdsw.Hist.E.L. 392; 4 Bla.Comm. 69.

CONSERVATORS OF RIVERS. Commissioners or trustees in whom the control of a certain river is vested, in England, by act of parliament.

CONSERVATORS OF THE PEACE. Officers authorized to preserve and maintain the public peace. In England, these officers were locally elected by the people until the reign of Edward III, when their appointment was vested in the king. Their duties were to prevent and arrest for breaches of the peace, but they had no power to arraign and try the offender until about 1360, when this authority was given to them by act of parliament, and "then they acquired the more honorable appellation of justices of the peace." 1 Bl.Comm. 351.

Even after this time, however, many public officers were styled "conservators of the peace," not as a distinct office but by virtue of the duties and authorities pertaining to their offices. In this sense the term may include the king himself, the lord chancellor, justices of the king's bench, master of the rolls, coroners, sheriffs, constables, etc. 1 Bl.Comm. 350. See Smith v. Abbott, 17 N.J.L. 358. In Texas, the constitution provides that county judges shall be conservators of the peace. Const.Tex. art. 4, § 15; Jones v. State, Tex.Cr.App., 65 S.W. 92. The Constitution of Delaware (1831) provides that: "The members of the senate and house of representatives, the chancellor, the judges, and the attorney-general shall, by virtue of their offices, be conservators of the peace throughout the state; and the treasurer, secretary, and prothonotaries, registers, recorders, sheriffs, and coroners, shall, by virtue of their offices, be conservators thereof within the counties respectively in which they reside."

CONSERVE. To save from loss. U. S. v. Mammoth Oil Co., D.C.Wyo., 5 F.2d 330, 351.

CONSIDER. To fix the mind on, with a view to careful examination; to examine; to inspect. Eastman Kodak Co. v. Richards, 204 N.Y.S. 246, 248, 123 Misc. 83. To deliberate about and ponder over. People v. Tru-Sport Pub. Co., 291 N.Y.S. 449, 457, 160 Misc. 628. To entertain or give heed to. Rodolf v. Board of Com'rs of Tulsa County, 122 Okl. 120, 251 P. 740, 741. See, also, Considered.

CONSIDERABLE. Worthy of consideration; required to be observed. Gougar v. Buffalo Specialty Co., 26 Colo.App. 8, 141 P. 511, 514.

A "considerable" number, as of persons, does not necessarily mean a very great or any particular number of persons; the term "considerable" being merely relative. People v. Kings County Iron Foundry, 209 N.Y. 207, 102 N. E. 598, 599.

CONSIDERATIO CURIAE. The judgment of the court.

CONSIDERATION. Practice. A technical term indicating that a tribunal has heard and judicially

determined matters submitted to it. Meaney v. State Industrial Accident Commission, 113 Or, 371, 232 P. 789, 791.

Contracts

The inducement to a contract. The cause, mo• tive, price, or impelling influence which induces a contracting party to enter into a contract. The reason or material cause of a contract. 2 Bla. Comm. 443; Cassinelli v. Stacy, 238 Ky. 827, 38 S.W.2d 980, 983.

Consideration is not to be confounded with motive. Consideration means something which is of value in the eye of the law, moving from the plaintiff, either of benefit to the plaintiff or of detriment to the defendant. Patteson, J., in Langd.Sel.Cas.Contr. 168; s. c. 2 Q.B. 851; Miller v. Bank of Holly Springs, 131 Miss. 55, 95 So. 129, 130, 31 A.L.R. 698. "Nothing is consideration that is not regarded as such by both parties." Schlecht v. Schlecht, 168 Minn. 168, 209 N.W. 883, 887. And "price" and "consideration," though sometimes the same, are not always identical. Oregon Home Builders v. Crowley, 87 Or. 517, 170 P. 718, 721.

The "inducement" for a contract is that which influences the act, while "consideration" means the parting with something by the one from whom it moves. E. F. Spears & Sons v. Winkle, 186 Ky. 585, 217 S.W. 691, 692.

An act or forbearance, or the promise thereof, which is offered by one party to an agreement, and accepted by the other as an inducement to that other's act or promise. Poll.Contr. 91.

Any benefit conferred, or agreed to be conferred, upon the promisor, by any other person, to which the promisor is not lawfully entitled, or any prejudice suffered, or agreed to be suffered, by such person, other than such as he is at the time of consent lawfully bound to suffer, as an inducement to the promisor. Hence doing only of what one is already under obligation to do is not "consideration" for a contract. Hogan v. Supreme Camp of the American Woodmen, 146 Fla. 413, 1 So.2d 256, 258.

Any act of the plaintiff (or the promisee) from which the defendant (the promisor) or a stranger derives a benefit or advantage, or any labor, detriment, Jar inconvenience sustained by the plaintiff, however small, if such act is performed or inconvenience suffered by the plaintiff by the consent, express or implied, of the defendant. 3 Scott, 250.

A benefit to the promisor, or a loss or detriment to the promisee. Harris v. Johnson, 75 Wash. 291, 134 P. 1048, 1050; Fowler v. Smith, 24 Ohio App. 324, 156 N.E. 913, 914. Or benefit to a third party. Wellshire Land Co. v. City and County of Denver, 103 Colo. 416, 87 P.2d 1. But nothing is "consideration" that is not regarded as such by both parties. Michael v. Holland, 111 Ind. App. 34, 40 N.E.2d 362, 365.

Some right, interest, gain, advantage, benefit, or profit to one party, usually the promisor, or some forbearance, detriment, prejudice, inconvenience, disadvantage, loss, or responsibility, act, or service given, suffered, or undertaken by the promisee. Exum v. Lynch, 125 S.E. 15, 17, 188 N. C. 392; Furman University v. Waller, 117 S.E. 356, 358, 124 S. C. 68, 33 A.L.R. 615; Robinson v. Oliver, 156 N.Y.S. 896, 898, 171 App. Div. 349; L.R. 10 Ex. 162; Train v. Gold, 5 Pick. (Mass.) 380; Bankers Trust Co. v. Economy Coal Co., 224 Iowa 36, 276 N.W. 16, 20.

Considerations are either *executed* or *executory; express* or *implied; good* or *valuable.* See definitions *infra.*

Adequate Consideration, See Adequate,

Concurrent Consideration. One which arises at the same time or where the promises are simultaneous.

Continuing Consideration. One consisting in acts or performances which must necessarily extend over a considerable period of time.

Equitable or Moral Considerations. Considerations which are devoid of efficacy in point of strict law, but are founded upon a moral duty, and may be made the basis of an express promise.

Executed or Executory Considerations. The former are acts done or values given before or at the time of making the contract; the latter are promises to give or do something in future.

Express or Implied Considerations. The former are those which are specifically stated in a deed, contract, or other instrument; the latter are those inferred or supposed by the law from the acts or situation of the parties.

Express consideration is a consideration which is distinctly and specifically named in the written contract or in the oral agreement of the parties.

Failure of Consideration. See Failure of Consideration.

Fair and Valuable Consideration. See Fair and Valuable Consideration.

Fair Consideration, See Fair Consideration.

Good Consideration. Such as is founded on natural duty and affection, or on a strong moral obligation. Chit.Cont. 7. A consideration for love and affection entertained by and for one within degree recognized by law. Gay v. Fricks, 211 Ala. 119, 99 So. 846, 847. See, also, Berry v. Berry, 83 W.Va. 763, 99 S.E. 79.

Motives of natural duty, generosity, and prudence come under this class. 2 Bla.Comm. 297; Doran v. McConlogue, 150 Pa. 98, 24 A. 357; Mascolo v. Montesanto, 61 Conn. 50, 23 A. 714, 29 Am.St.Rep. 170.

The term is sometimes used in the sense of a consideration valid in point of law; and it then includes a valuable or sufficient as well as a meritorious consideration. Hodgson v. Butts, 3 Cra. (U.S.) 140, 2 L. Ed. 391; Lang v. Johnson, 24 N.H. 302; Ambl. 598. Generally, however, *good is* used in antithesis to *valuable consideration (q. v.).*

Gratuitous Consideration. One which is not founded upon any such loss, injury, or inconvenience to the party to whom it moves as to make it valid in law.

Illegal Consideration. An act which if done, or a promise which if enforced, would be prejudicial to the public interest. Harriman, Cont. 101.

Implied Considerations. See Express or Implied Considerations, supra.

Impossible Consideration. One which cannot be performed.

Inadequate Consideration. See that title.

Legal Consideration. One recognized or permitted by the law as valid and lawful; as distinguished from such as are illegal or immoral. The term is also sometimes used as equivalent to

"good" or "sufficient" consideration. See Sampson v. Swift, 11 Vt. 315; Albert Lea College v. Brown, 88 Minn. 524, 93 N.W. 672, 60 L.R.A. 870.

Meritorious Consideration. See Good Consideration.

Moral Considerations. See Equitable or Moral Considerations, supra.

Nominal Consideration. One bearing no relation to the real value of the contract or article, as where a parcel of land is described in a deed as being sold for "one dollar," no actual consideration passing, or the real consideration being concealed. This term is also sometimes used as descriptive of an inflated or exaggerated value placed upon property for the purpose of an exchange. Boyd v. Watson, 101 Iowa 214, 70 N.W. 123; Emmi v. Patane, 220 N.Y.S. 495, 498, 128 Misc. 901.

Past Consideration. An act done before the contract is made, which is ordinarily by itself no consideration for a promise. Anson, Cont. 82; Witt v. Wilson, Tex.Civ.App., 160 S.W. 309, 310.

As to time, considerations may be of the past, present, or future. Those which are present or future will support a contract not void for other reasons. Story, Contr. 71.

Pecuniary Consideration. A consideration for an act or forbearance which consists either in money presently passing or in money to be paid in the future, including a promise to pay a debt in full which otherwise would be released or diminished by bankruptcy or insolvency proceedings. See Phelps v. Thomas, 6 Gray (Mass.) 328; In re Ekings, D.C.N.J., 6 F. 170.

Sufficient Consideration. One deemed by the law of sufficient value to support an ordinary contract between parties, or one sufficient to support the particular transaction. Golson v. Dunlap, 73 Cal. 157, 14 P. 576.

Valuable Consideration. See Consideration.

Want of Consideration. See Want of Consideration.

CONSIDERATUM EST PER CURIAM. (It is considered by the court.) The formal and ordinary commencement of a judgment. Baker v. State, 3 Ark. 491.

CONSIDERATUR. L. Lat. It is considered. Held to mean the same with *consideratum est.* 2 Strange, 874.

CONSIDERED. Deemed; determined; adjudged; reasonably regarded. State v. District Court of Eighth Judicial Dist. in and for Cascade County, 64 Mont. 181, 208 P. 952, 955. See Consider.

Evidence may be said to have been "considered" when it has been reviewed by a court to determine whether any probative force should be given it. Taylor v. Gossett, Tex. Civ.App., 269 S.W. 230, 233.

CONSIGN. In the civil law. To deposit in the custody of a third person a thing belonging to the debtor, for the benefit of the creditor, under the authority of a court of justice. Poth.Obl. pt. 3, c. 1, art. 8.

In Commercial Law. To deliver goods to a carrier to be transmitted to a designated factor or agent. Powell v. Wallace, 44 Kan. 656, 25 P. 42; Ide Mfg. Co. v. Sager Mfg. Co., 82 Ill.App. 685. To deliver or transfer as a charge or trust; to commit, intrust, give in trust; to transfer from oneself to the care of another; to send or transmit goods to a merchant, factor, or agent for sale; to deposit with another to be sold, disposed of, or called for. Edwards v. Baldwin Piano Co., 79 Fla. 143, 83 So. 915, 918.

CONSIGNATION. In Scotch law. The payment of money into the hands of a third party, when the creditor refuses to accept of it. The person to whom the money is given is termed the "consignatory." Bell.

In French law. A deposit which a debtor makes of the thing that he owes into the hands of a third person, and under the authority of a court of justice. 1 Poth.Obl. 536; Weld v. Hadley, 1 N. H. 304.

CONSIGNEE. In mercantile law. One to whom a consignment is made. The person to whom goods are shipped for sale. Lyon v. Alvord, 18 Conn. 80; Comm. v. Harris, 168 Pa. 619, 32 A. 92. One to whom goods are consigned, shipped, or otherwise transmitted. State v. Chadbourne, 132 Me. 5, 164 A. 630, 631. The one to whom the carrier may lawfully make delivery in accordance with its contract of carriage. Great Northern Pac. S. S. Co. v. Rainier Brewing Co., C.C.A.Wash., 255 F. 762, 764; One to whom merchandise has been delivered. International Trust Co. v. Webster Nat. Bank, 258 Mass. 17, 154 N.E. 330, 332, 49 A. L.R. 267; Under a statute, the person who, under circumstances in which he might be entitled to the delivery of the goods, represents that he is so entitled, tenders a bond in the statutory form, and requests delivery. St. Louis, I. M. & S. R. Co. v. Bankers' Surety Co., 115 Ark. 58, 172 S.W. 266, 268.

CONSIGNMENT. The act or process of consigning goods; the transportation of goods consigned; an article or collection of goods sent to a factor; goods or property sent, by the aid of a common carrier, from one person in one place to another person in another place; something consigned and shipped. See Consign. In re Taylor, D.C.Mich., 46 F.2d 326, 328.

Feature which distinguishes "conditional sale" from "consignment" is that in the former the purchaser undertakes an absolute obligation to pay for the goods, whereas the latter is nothing more than a bailment for sale. In re Sachs, D.C.Md., 31 F.2d 799, 800.

In stockyard parlance, all the livestock of one species delivered in the name of one person to one market agency to be offered for sale during the trading hours of one day. Acker v. U. S., D.C.I11., 12 F.Supp. 776, 780. Mutual Transfer Corporation of Galax v. Commonwealth, 172 Va. 622, 1 S.E.2d 477, 479.

CONSIGNOR. One who sends or makes a consignment; a shipper of goods.

CONSILIA MULTORUM QU2ERUNTUR IN MAGNIS. 4 Inst. 1. The counsels of many are required in great things.

CONSILIARIUS. In the civil law. A counsellor, as distinguished from a pleader or advocate. An assistant judge. One who participates in, the decisions. Du Cange.

CONSILIUM. A day appointed to hear the counsel of both parties. A case set down for argument.

It is commonly used for the day appointed for the argument of a demurrer, or errors assigned. 1 Tidd, Pr. 438; 2 Tidd, Pr. 684, 1122; 1 Sell.Pr. 336; 1 Archb.Pr. 191, 246.

CONSIMILI CASU. In practice. A writ of entry, framed under the provisions of the statute Westminster 2, (13 Edw. I.,) c. 24, which lay for the benefit of the reversioner, where a tenant by the curtesy aliened in fee or for life. 3 Bla.Comm., 4th Dublin ed. 183 n.; Bac.Abr. Court of Chancery (A).

Many other new writs were framed under the provisions of this statute; but this particular writ was known emphatically by the title here defined. The writ is now practically obsolete. See 3 Bla.Comm. 51.

CONSIST. To stand together, to be composed of or made up of. Hoskins Mfg. Co. v. General Electric Co., D.C.I11., 212 F. 422; In re Clark's Estate, 100 Vt. 217, 136 A. 389, 393. See Consisting.

CONSISTENT. Having agreement with itself or something else; accordant; harmonious; congruous; compatible; compliable; not contradictory. Baldwin-Heckes Co. v. Kammerlohr, 123 Neb. 317, 242 N.W. 661, 663; Ryan v. Roach Drug Co., 113 Old. 130, 239 P. 912, 914.

"Consistent with" means in harmony with. Shay v. Roth, 64 Cal.App. 314, 221 P. 967, 969.

CONSISTING. Being composed or made up of. This word is not synonymous with "including;" for the latter, when used in connection with a number of specified objects, always implies that there may be others which are not mentioned. In re Wright's Estate, 166 Misc. 52, 2 N.Y.S.2d 25, 28.

CONSISTOR. A magistrate. Jacob L. D.

CONSISTORIUM. The state council of the Roman emperors. Mackeld.Rom.Law, § 58.

CONSISTORY. An assembly of cardinals convoked by the pope.

A tribunal *(praetorium).*

CONSISTORY COURTS. The courts of diocesan bishops held in their several cathedrals (before the bishop's chancellor, or commissary, who is the judge) for the trial of all ecclesiastical causes arising within their respective dioceses, and also for granting probates and administrations. Mozley & Whitley; 1 Holdsw.Hist.E.L. 369, citing L.R. 1902, 1 K.B. 816. From the sentence of these courts an appeal lies to the Provincial Court of the archbishop of each province respectively. 2 Steph. Comm. 230; 3 Steph.Comm. 430; 3 Bla.Comm. 64; 1 Woodd.Lect. 145; Halifax, An. b. 3, c. 10, n. 12.

CONSOBRINI. In the civil law. Cousins-german, in general; brothers' and *sisters'* children, considered in their relation to each other.

• CONSOCIATIO. Lat. An association, fellowship, or partnership. Applied by some of the older writers to a corporation, and even to a nation considered as a body politic. Thomas v. Dakin, 22 Wend. (N.Y.) 104.

CONSOLATION. Comfort, contentment, ease, enjoyment, happiness, pleasure, satisfaction. National Surety Co. v. Jarrett, 95 W.Va. 420, 121 S.E. 291, 295.

CONSOLATO DEL MARE. The name of a code of sea-laws, said to have been compiled by order of the kings of Arragon (or, according to other authorities, at Pisa or Barcelona) in the fourteenth century, which comprised the maritime ordinances of the Roman emperors, of France and Spain, and of the Italian commercial powers. This compilation exercised a considerable influence in the formation of European maritime law.

CONSOLIDATE. In a general sense, to unite into one mass or body, as to consolidate the forces of an army, or various funds. In parliamentary usage, to consolidate two bills is to unite them into one. In law, to consolidate benefices is to combine them into one. The term means something more than to rearrange or redivide. Fairview v. Durland, 45 Iowa 56.

To make solid or firm; to unite, compress, or pack together and form into a more compact mass, body, or system. Marfield v. Cincinnati, D. & T. Traction Co., 111 Ohio St. 139, 144 N.E. 689, 696, 40 A.L.R. 357. To cause to become united and extinguished in a superior right or estate by both becoming vested in the same person. Swaim v. Smith, 174 Tenn. 688, 130 S.W.2d 116, 120.

CONSOLIDATED FUND. In England. (Usually abbreviated to *Consols.)* A fund for the payment of the public debt.

CONSOLIDATED LAWS OR STATUTES. A collection or compilation into one statute or one code or volume of all the laws of the state in general, or of those relating to a particular subject; nearly the same as "compiled laws" or "compiled statutes." See Compilation. And see Ellis v. Parsell, 100 Mich. 170, 58 *N.W.* 839.

CONSOLIDATED ORDERS. The orders regulating the practice of the English court of ohancery, which were issued, in 1860, in substitution for the various orders which had previously been promulgated from time to time.

CONSOLIDATION. Act of consolidating, or the status of being consolidated. O'Malley v. Wilson, 182 Ga. 97, 185 S.E. 109, 114.

In the civil law. The union of the usufruct with the estate out of which it issues, in the same person; which happens when the usufructuary acquires the estate, or *vice versa.* In either case the usufruct is extinct. Lec.El.Dr.Rom. 424.

In ecclesiastical law. The union of two or more benefices in one. Cowell.

In practice. The union of two or more actions, as in the same declaration, or for the purpose of

trial or appellate review. See Consolidation of Actions.

In Scotch law. The junction of the property and superiority of an estate, where they have been disjoined. Bell.

Consolidation of actions. The act or process of uniting several actions into one trial and judgment, by order of a court, where all the actions are between the same parties, pending in the same court, and involving substantially the same subject-matter, issues and defenses; or the court may order that one of the actions be tried, and the others decided without trial according to the judgment in the one selected. 249 N.Y.S. 33, 36, 139 Misc. 564; National Union Fire Ins. Co. v. Chesapeake and 0. Ry. Co., D.C.Ky., 4 F.Supp. 25, 30.

It means the merging of two or more actions into one so that they lose their separate identity, while in trial of "several actions together" each retains its separate character and requires the entry of a separate judgment. Ramswick v. Messerer, 200 Minn. 299, 274 N.W. 179; Reeves v. Philadelphia Gas Works Co., 107 Pa.Super. 422, 164 A. 132, 134, 107.

CONSOLIDATION OF BENEFICES. The act or process of uniting two or more of them into one.

CONSOLIDATIONS OF CORPORATIONS. Takes place when two or more corporations are extinguished, and by the same process a new one is created, taking over the assets and assuming the liabilities of those passing out of existence. A unifying of two or more corporations into a single new corporation having the combined capital, franchises, and powers of all its constituents. Alabama Power Co. v. McNinch, 68 App.D.C. 132, 94 F.2d 601, 611, 612. Freeman v. Hiznay, 349 Pa. 89, 36 A.2d 509; Murphy v. Niehus, 50 Ohio App. 299, 198 N.E. 197, 200.

*Merger distinguished.* In a "merger," one corporation absorbs the other and remains in existence while the other is dissolved, and in a "consolidation" a new corporation is created and the consolidating corporations are extinguished. Von Weise v. Commissioner of Internal Revenue, C.C.A., 69 F.2d 439, 442; Alabama Power Co. v. McNinch, 94 F.2d 601, 610, 611, 612, 68 App.D.C. 132. See, also, Merger.

Consolidation rule. In practice. A rule or order of court requiring a plaintiff who has instituted separate suits upon several claims against the same defendant, to consolidate them in one action, where that can be done consistently with the rules of pleading. Brown v. Scott, 1 Dall. (Pa.) 147, 1 L.Ed. 74; Groff v. Musser, 3 Serg. & R. (Pa.) 264; 2 Archb.Pr. 180. The Federal courts are authorized to consolidate actions involving a common question of law or fact. Federal Rules of Civil Procedure, Rule 42, 28 U.S.C.A.

CONSOLS. An abbreviation of the expression "consolidated annuities," and used in modern times as a name of various funds united in one for the payment of the British national debt. Also, a name given to certain issues of bonds of the state of South Carolina. Whaley v. Gaillard, 21 S.C. 568. See Consolidated Fund.

CONSONANT STATEMENT. A prior declaration of a witness whose testimony has been attacked and whose credibility stands impeached, which the court will allow to be proved by the person to whom the declaration was made in order to support the credibility of the witness and which but for the existence of such impeachment would ordinarily be excluded as hearsay. Commonwealth v. White, 16 A.2d 407, 409, 340 Pa. 139.

CONSORTIO MALORUM ME QUOQUE MALUM FACIT, Moore, 817. The company of wicked men makes me also wicked.

CONSORTIUM. Conjugal fellowship of husband and wife, and the right of each to the company, co-operation, affection, and aid of the other in every conjugal relation. McMillan v. Smith, 47 Ga.App. 646, 171 S.E. 169, 170; Shedrick v. Lathrop, 106 Vt. 311, 172 A. 630, 632; Harris v. Kunkel, 227 Wis. 435, 278 N.W. 868, 869.

The term includes the exclusive right to the services of the spouse, and to his or her society, companionship, and conjugal affection. Smith v. Nicholas Bldg. Co., 93 Ohio St. 101, 112 N.E. 204.

In its original application the term was not confined to society, companionship, and conjugal affection, but included service as a prominent, if not the predominant, factor-not so much the service resulting in the performance of labor or the earning of wages as the service which contributed aid and assistance in all the relations of domestic life. Hinnant v. Tide Water Power Co., 189 N.C. 120, 126 S.E. 307, 309, 37 A.L.R. 889.

In the civil law. A union of fortunes; a lawful Roman marriage. The joining of several persons as parties to one action.

In old English law, the term signified company or society, and in the language of pleading, as in the phrase *per quod consortium amisit,* it has substantially the same meaning, viz., the companionship or society of a wife. 3 Bla.Comm. 140; Kelley v. Railroad Co., 168 Mass. 308, 46 N.E. 1063, 38 L.R.A. 631, 60 Am.St.Rep. 397.

CONSORTSHIP. In maritime law. An agreement or stipulation between the owners of different vessels that they shall keep in company, mutually aid, instead of interfering with each other, in wrecking and salvage, and share any money awarded as salvage, whether earned by one vessel or both. Andrews v. Wall, 3 How. 571, 11 L.Ed. 729.

CONSPICUOUS PLACE. Within the meaning of a statute relating to the posting of notices, a "conspicuous place" means one which is reasonably calculated to impart the information in question. Didier v. Webster Mines Corporation, 49 Nev. 5, 234 P. 520, 523.

CONSPIRACY. In criminal law. A combination or confederacy between two or more persons formed for the purpose of committing, by their joint efforts, some unlawful or criminal act, or some act which is innocent in itself, but becomes unlawful when done by the concerted action of the conspirators, or for the purpose of using criminal or unlawful means to the commission of an act not in itself unlawful. Pettibone v. U. S., 148 U.S. 197, 13 S.Ct. 542, 37 L.Ed. 419; Mitchell v. Hitchman Coal & Coke Co., C.C.A.W.Va., 214 F. 685, 708; Hamilton v. Cooley, 184 N.E. 568, 571,

99 Ind.App. 1; Browning v. Browning, 226 Mo. App. 322, 41 S.W.2d 860, 868.

A combination, or an agreement between two or more persons, for accomplishing an unlawful end or a lawful end by unlawful means. 4 B. & Ad. 345; Cumberland Telephone & Telegraph Co. v. Stevens, D.C.Miss., 274 F. 745, 746; Lauf v. E. G. Shinner & Co., C.C.A.Wis., 82 F.2d 68, 72; Morrison v. Goodspeed, 100 Colo. 470, 68 P.2d 458, 464.

A partnership in criminal purposes. Marino *v.* United States, C.C.A.Cal., 91 F.2d 691, 113 A.L.R. 975.

The essence of "conspiracy" *is* an agreement, together with an overt act, to do an unlawful act, or do a lawful act in an unlawful manner. Cooper v: O'Connor, 99 F.2d 135, 142, 69 App.D.C. 100, 118 A.L.R. 1440. Mere knowledge, acquiescence, approval, or attempt on part of one to perpetrate illegal act is insufficient. People v. Link, 365 Ill. 266, 6 N.E.2d 201.

A conspiracy may be a continuing one; actors may drop out, and others drop in; the details of operation may change from time to time; the members need nit know each other or the part played by others; a member need not know all the details of the plan or the operations; he must, however, know the purpose of the conspiracy and agree to become a party to a plan to effectuate that purpose. Craig v. U. S., C.C.A.Cal., 81 F.2d 816, 822.

A consultation or agreement between two or more persons, either falsely to accuse another of a crime punishable by law; or wrongfully to injure or prejudice a third person, or any body of men, in any manner ; or to commit any offense punishable by law; or to do any act with intent to prevent the course of justice; or to effect a legal purpose with a corrupt intent, or by improper means. Hawk. P.C. c. 72, 2; Archb.Crim.P1. 390, adding also combinations by journeymen to raise wages. State v. Murphy, 6 Ala. 765, 41 Am. Dec. 79.

Civil and Criminal Conspiracies

The term "civil" is used to designate a conspiracy which will furnish ground for a civil action, as where, in carrying out the design of the conspirators, overt acts are done causing legal damage, the person injured has a right of action. It is said that the gist of civil conspiracy is the injury or damage. While criminal conspiracy does not require such overt acts, yet, so far as the rights and remedies are concerned, all criminal conspiracies are embraced within the civil conspiracies. Martha Mills v. Moseley, 50 Ga.App. 536, 179 S.E. 159.

Accurately speaking, there is no such thing as a civil action for conspiracy. The better view is that the damage sustained, and not the conspiracy is the gist of the action. The combination may be of no consequence except as bearing upon rules of evidence or the persons liable. Dahlquist v. Mattson, 40 Idaho, 378, 233 P. 883, 885.

The essence of a "civil conspiracy" is a concert or combination to defraud or cause other injury to person or property, which results in damage to the person or property of plaintiff. Conner v. Bryce, Sup., 170 N.Y.S. 94, 95.

CONSPIRATIONE. An ancient writ that lay against conspirators. Reg.Orig. 134; Fitzh.Nat. Brev. 114.

CONSPIRATORS. Persons guilty of a conspiracy. State v. Collins, 88 Mont. 514, 294 P. 957, 961, 73 A.L.R. 861.

Where two or more persons enter on a common enterprise or adventure and criminal offense is contemplated each is a "conspirator". Kelly v. State, 31 Ala.App. 194, 13 So.2d 691, 692.

Those who bind themselves by oath, covenant, or other alliance that each of them shall aid the other falsely and maliciously to indict persons; or falsely to move and maintain pleas, etc. 33 Edw. I. St. 2. Besides these, there are conspirators in treasonable purposes; *as* for plotting against the government. Wharton.

CONSPIRE. To engage in conspiracy. Wright v. United States, C.C.A.La., 48 C.C.A. 37, 108 F. 805, 809.

It carries with it the idea of agreement, concurrence and combination, and hence is inapplicable to a single person or thing, and one cannot agree or conspire with another. who does not agree or conspire with him. Horton v. Johnson, 192 Ga. 338, 15 S.E.2d 605, 615.

CONSTABLE. In American law. An officer of a municipal corporation (usually elected) whose duties are similar to those of the sheriff, though his powers are less and his jurisdiction smaller. He is to preserve the public peace, execute the process of magistrates' courts, and of some other tribunals, serve writs, attend the sessions of the criminal courts, have the custody of juries, and discharge other functions sometimes assigned to him by the local law or by statute. Allor v. Wayne County, 43 Mich. 76, 4 N.W. 492.

In English law. A public civil officer, whose proper and general duty is to keep the peace within his district, though he *is* frequently charged with additional duties. 1 B1.Comm. 356. There are "high," "petty," and "special" constables. See the definitions, *infra.*

In Medieval law. A high functionary under the French and English kings, the dignity and importance of whose office was second only to that of the monarch. He was in general the leader of the royal armies, and had cognizance of all matters pertaining to war and arms, exercising both civil and military jurisdiction. He was also charged with the conservation of the peace of the nation. Thus there was a "Constable of France" and a "Lord High Constable of England." Rich v. Industrial Commission, 80 Utah 511, 15 P.2d 641, 644.

Constable of a castle. In English law. An officer having charge of a castle; a warden, or keeper; otherwise called a "castellain." Stat. Westm. 1, *c.* 7 (3 Edw. I.) ; Spelman, Gloss.

Constable of England. (Called, also, "Mare shal.") His office consisted in the care of the common peace of the realm in deeds of arms and matters of war. Lamb. Const. 4; 3 Steph. Comm. 47; 4 Bla. Comm. 92.

Constable of Scotland. An officer who was formerly entitled to command all the king's armies in the absence of the king, and to take cognizance of all crimes committed within four miles of the king's person or of parliament, the privy council, or any general convention of the states of the kingdom. The office was hereditary in the family of Errol, and was abolished by the 20 Geo. III, c. 43. Bell; Ersk. Inst. 1, 3, 37.

Constable of the exchequer. An officer mentioned in Fleta, lib. 2, c. 31, and in 51 Hen. III, stat. 5, cited by Cowell.

High constables. In England, officers appointed in every hundred or franchise, whose proper duty

seems to be to keep the king's peace within their respective hundreds. 1 Bl.Comm. 356; 3 Steph. Comm. 47; Coke, 4th Inst. 267.

High constable of England, lord. His office has been disused (except only upon great and solemn occasions, as the coronation, or the like) since the attainder of Stafford, Duke of Buckingham, in the reign of Henry VII.

Petty constables. Inferior officers in every town and parish, subordinate to the high constable of the hundred, whose principal duty is the preservation of the peace, though they also have other particular duties assigned to them by act of parliament, particularly the service of the summonses and the execution of the warrants of justices of the peace. 1 Bl.Comm. 356; 3 Steph. Comm. 47, 48.

Special constables. Persons appointed (with or without their consent) by the magistrates to execute warrants on particular occasions, as in the case of riots, etc.

CONSTABLEWICK. In English law. The territorial jurisdiction of a constable; as bailiwick is of a bailiff or sheriff. 5 Nev. & M. 261.

CONSTABULARIUS. An officer of horse; an officer having charge of foot or horse; a naval commander; an officer having charge of military affairs generally. Spelman.

In England his power was early diminished and restricted to those duties which related to the preservation of the king's peace. The office is now abolished in England, except as a matter of ceremony, and in France. Guyot, *Rlp. Univ.;* Cowell.

CONSTANT. Fixed or invariable; uniform. Webster. Continually recurring, regular, steady. Pfisterer v. Key, 218 Ind. 521, 33 N.E.2d 330, 335.

CONSTANTLY. In a constant manner; uniformly; continuously. Pfisterer v. Key, 218 Ind. 521, 33 N.E.2d 330, 335.

An instruction that a train crew knew that a railroad right of way had been "constantly," frequently, and regularly used by a considerable number of persons at a particular hour of the day was not subject to the criticism that the word "constantly" imported an uninterrupted and continuous presence of such persons on the track, so that at no moment of time it would be vacant of pedestrians. Grauer v. Alabama Great Southern R. Co., 209 Ala. 568, 96 So. 915, 919.

CONSTAT. It is clear or evident; it appears; it is certain; there is no doubt. *Non constat,* it does not appear.

A certificate which the clerk of the pipe and auditors of the exchequer made, at the request of any person who intended to plead or move in that court, for the discharge of anything. The effect of it was the certifying what appears *(constat)* upon record, touching the matter in question. Wharton.

A certificate by an officer that certain matters therein stated appear of record. Wilcox v. Ray, 2 N.C. 410.

An exemplification under the great seal of the enrolment of letters patent. Co. Litt. 225.

CONSTAT D'HUISSIER. In French law. An affidavit made by a *huissier,* setting forth the appearance, form, quality, color, etc., of any article upon which a suit depends. Arg. Fr. Mere. Law, 554.

CONSTATE. To establish, constitute, or ordain.

*"Constating instruments"* of a corporation are its charter, organic law, or the grant of powers to it. See examples of the use of the term, Green's Brice, Ultra Vires, p. 39; Ackerman v. Halsey, 37 N.J.Eq. 363.

CONSTITUENT. He who gives authority to another to act for him.

The term is used as a correlative to "attorney," to denote one who constitutes another his agent or invests the other with authority to act for him. Kunz v. Lowden, C.C.A.Kan., 124 F.2d 911, 913.

It is also used in the language of politics, as a correlative to "representative," the constituents of a legislator being those whom he represents and whose interests he is to care for in public affairs; usually the electors of his district.

CONSTITUERE. Lat. To appoint, constitute, establish, ordain, or undertake. Used principally in ancient powers of attorney, and now supplanted by the English word "constitute."

CONSTITUIMUS. A Latin term, signifying *we constitute* or *appoint.*

CONSTITUTED AUTHORITIES. Officers properly appointed under the constitution for the government of the people.

CONSTITUTIO. In the Civil law. An imperial ordinance, decree, or constitution, distinguished from *Lex, Senatus-Consultum,* and other kinds of law and having its effect from the sole will of the emperor. Dig. 1, 4, 1, Cooper's notes. An establishment or settlement. Used of controversies settled by the parties without a trial. Calvin. A sum paid according to agreement. Du Cange.

In Old English Law

An ordinance or statute. A provision of a statute.

CONSTITUTIO DOT'S. Establishment of dower.

CONSTITUTION. The organic and fundamental law of a nation or state, which may be written or unwritten, establishing the character and conception of its government, laying the basic principles to which its internal life is to be conformed, organizing the government, and regulating, distributing, and limiting the functions of its different departments, and prescribing the extent and manner of the exercise of sovereign powers. A charter of government deriving its whole authority from the governed. Fairhope Single Tax Corporation v. Melville, 193 Ala. 289, 69 So. 466, 470. See, also, Browne v. City of New York, 213 App. Div. 206, 211 N.Y.S. 306.

In a more general sense, any fundamental or important law or edict; as the Novel Constitutions of Justinian; the Constitutions of Clarendon.

CONSTITUTION. In American law. The written instrument agreed upon by the people of the Union or of a particular state, as the absolute rule of action and decision for all departments and officers of the government in respect to all the points covered by it, which must control until it shall be changed by the authority which established it, and in opposition to which any act or ordinance of any such department or officer is null and void. Cooley, Const. Lim. 3.

CONSTITUTIONAL. Consistent with the constitution; authorized by the constitution; not conflicting with any provision of the constitution or fundamental law of the state. Dependent upon a constitution, or secured or regulated by a constitution; as "constitutional monarchy," "constitutional rights."

CONSTITUTIONAL ALCALDE. A person of official status under Mexican law corresponding in many respects in dignity and authority to a justice of the peace under the American system of government. Tietzel v. Southwestern Const. Co., 48 N.M. 567, 154 P.2d 238, 242.

CONSTITUTIONAL CONVENTION. A duly constituted assembly of delegates or representatives of the people of a state or nation for the purpose of framing, revising, or amending its constitution. Bass v. Albright, Tex.Civ.App., 59 S.W.2d 891, 894.

CONSTITUTIONAL COURT. A court named or described and expressly protected by Constitution, or recognized by name or definite description in Constitution but given no express protection thereby. Gorham v. Robinson, 57 R.I. 1, 186 A. 832.

CONSTITUTIONAL LAW. (1) That branch of the public law of a state which treats of the organization and frame of government, the organs and powers of sovereignty, the distribution of political and governmental authorities and functions, the fundamental principles which are to regulate the relations of government and subject, and which prescribes generally the plan and method according to which the public affairs of the state are to be administered. (2) That department of the science of law which treats of constitutions, their establishment, construction, and interpretation, and of the validity of legal enactments as tested by the criterion of conformity to the fundamental law. (3) A constitutional law is one which *is* consonant to, and agrees with, the constitution; one which is not in violation of any provision of the constitution of the particular state.

CONSTITUTIONAL LIBERTY OR FREEDOM. Such freedom as is enjoyed by the citizens of a country or state under the protection of its constitution; the aggregate of those personal, civil, and political rights of the individual which are guaranteed by the constitution and secured against invasion by the government or any of its agencies. People v. Hurlbut, 24 Mich. 106, 9 Am.Rep. 103.

CONSTITUTIONAL OFFICER. One whose tenure and term of office are fixed and defined by the constitution, as distinguished from the incumbents of offices created by the legislature. Foster v. Jones, 79 Va. 642, 52 Am.Rep. 637.

CONSTITUTIONAL PSYCHOPATHIC INFERIORITY. Individuals who show a lifelong and constitutional tendency not to conform to the customs of the group, and who habitually misbehave, and have no sense of responsibility to their fellowmen or to society as a whole. These individuals fail to learn by experience and are inadequate, incompatible, and inefficient. State ex rel. Pearson v. Probate Court of Ramsey County, 205 Minn. 545, 287 N.W. 297, 300; Wilson v. Walters, Cal.App., 112 P.2d 964.

CONSTITUTIONAL RIGHT. A right guaranteed to the citizens by the Constitution and so guaranteed as to prevent legislative interference therewith. Delaney v. Plunkett, 146 Ga. 547, 91 S.E. 561, 567, L.R.A.1917D, 926, Ann.Cas.1917E, 685.

CONSTITUTIONES. Laws promulgated, *i. e.,* enacted, by the Roman Emperor. They were of various kinds, namely, the following: (1) *Edicta;* (2) *decreta;* (3) *rescripta,* called also *"epistolce."* Sometimes they were general, and intended to form a precedent for other like cases; at other times they were special, particular, or individual, *(personales,)* and not intended to form a precedent. The emperor had this power of irresponsible enactment by virtue of a certain *lex regia,* whereby he was made the fountain of justice and of mercy. Brown.

CONSTITUTIONES TEMPORE POSTERIORES POTIORES SUNT HIS QUJE IPSAS PRIECESSERUNT. Dig. 1, 4, 4. Later laws prevail over those which preceded them.

CONSTITUTIONS OF CLARENDON. See Clarendon.

CONSTITUTIONS OF THE FOREST. See Charta de Foresta.

CONSTITUTOR. In the civil law. One who, by a simple agreement, becomes responsible for the payment of another's debt. Inst. 4, 6, 9.

CONSTITUTUM. In the civil law. An agreement to pay a subsisting debt which exists without any stipulation, whether of the promisor or another party. It differs from a stipulation in that it must be for an existing debt. Du Cange.

A day appointed for any purpose. A form of appeal. Calvinus, Lex.

CONSTITUTUM ESSE EAM DOMUM QUE NOSTRUM DEBERE EXISTIMARI, UBI QUISQUE SEDES ET TABULAS HABERET, SUARUMQUE RERUM CONSTITUTIONEM FECISSET. It is settled that that is to be considered the home of each one of us where he may have his habitation and account-books, and where he may have made an establishment of his business. Dig. 50, 16, 203.

CONSTRAINT. This term is held to be exactly equivalent with "restraint." Edmondson v. Harris, 2 Tenn.Ch. 427.

An abridgement of liberty or hindrance of the will, identical in meaning with the word "compulsion." Edmondson v. Harris, 2 Tenn.Ch. 427.

In Scotch law. Duress.

CONSTRUCT. To build; erect; put together; make ready for use. State v. Abele, 119 Ohio St. 210, 162 N.E. 807, 809. To adjust and join materials, or parts of, so as to form a permanent whole. Kinney v. Ehrensperger, 16 Ala.App. 289, 77 So. 439, 440. To put together constituent parts of something in their proper place and order. State ex rel. St. Louis County v. State Highway Commission, 315 Mo. 707, 286 S.W. 1, 2.

"Construct" is distinguishable from "maintain," which means to keep up, to keep from change, to preserve. State v. Olympia Light & Power Co., 91 Wash. 519, 158 P. 85, 89. Under a broad interpretation, however, "construct" may be synonymous with maintain, repair, or improve. Independent Highway Dist. No. 2 of Ada County v. Ada County, 24 Idaho 416, 134 P. 542, 545.

CONSTRUCTIO LEGIS NON FACIT INJURIAM. The construction of the law (a construction made by the law) works no injury. Co. Litt. 183; Broom, Max. 603. The law will make such a construction of an instrument as not to injure a party.

CONSTRUCTION. The process, or the art, of determining the sense, real meaning, or proper explanation of obscure or ambiguous terms or provisions in a statute, written instrument, or oral agreement, or the application of such subject to the case in question, by reasoning in the light derived from extraneous connected circumstances or laws or writings bearing upon the same or a connected matter, or by seeking and applying the probable aim and purpose of the provision. Koy v. Schneider, 110 Tex. 369, 221 S.W. 880, 884.

As applied to statutes, constitutions, contracts, etc., the term necessarily presupposes doubt, obscurity, or ambiguity. Cohn-Hall-Marx Co. v. Vanosdall, 25 Ohio App. 360, 157 N.E. 908, 909.

Drawing conclusions respecting subjects that lie beyond the direct expression of the term. Lieber, Leg. & Pol. Herm. 20; Roberts v. Portland Water Dist., 124 Me. 63, 126 A. 162, 163.

This term is properly distinguished from *interpretation,* although the two are often used synonymously. In strictness, interpretation is limited to exploring the written text, while construction goes beyond and may call in the aid of extrinsic considerations, as above indicated.

The process of bringing together and correlating a number of independent entities, so as to form a definite entity. The Dredge A, D.C.N.C., 217 F. 617, 631.

The creation of something new, as distinguished from the repair or improvement of something already existing. Cabell v. City of Portland, 153 Or. 528, 57 P.2d 1292, 1297. The act of fitting an object for use or occupation in the usual way, and for some distinct purpose. Paterson N. & R. R. Co. v. City of Paterson, 81 N.J.Eq. 124, 86 A. 68, 69. See Construct.

Construction, court of. A court of equity or of common law, as the case may be, is called the court of construction with regard to wills, as opposed to the court of probate, whose duty is to decide whether an instrument be a will at all. Now, the court of probate may decide that a given instrument is a will, and yet the court of construction may decide that it has no operation, by reason of perpetuities, illegality, uncertainty, etc. Wharton.

Equitable construction. A construction of a law, rule, or remedy which has regard more to the equities of the particular transaction or state of affairs involved than to the strict application of the rule or remedy; that is, a liberal and extensive construction, as opposed to a literal and restrictive. Smiley v. Sampson, 1 Neb. 91.

By "equity of a statute" is intended the rule of construction which admits within the operation of a statute a class of cases which are neither named nor excluded, but which, from their analogy to those that are named, are clearly and justly within the spirit and general meaning of the law; such cases are said to be "within the equity of the statute."

The modern doctrine is that to construe a statute liberally or according to its equity is nothing more than to give effect to it according to the intention of the lawmaker as indicated by its terms and purposes. Read v. Dingess, C. C.A.W.Va., 60 F. 21, 29, 8 C.C.A. 389.

Strict and liberal construction. Strict (or literal) construction is construction of a statute .or other instrument according to its letter, which recognizes nothing that is not expressed, takes the language used in its exact and technical meaning, and admits no equitable considerations or implications. Warner v. King, 267 Ill. 82, 107 N.E. 837, 839.

Liberal (or equitable) construction, on the other hand, expands the meaning of the statute to meet cases which are clearly within the spirit or reason of the law, or within the evil which it was designed to remedy, provided such an interpretation is not inconsistent with the language used; it resolves all reasonable doubts in favor of the applicability of the statute to the particular case. Black, Interp.Laws, 282; Causey v. Guilford County, 192 N.C. 298, 135 S.E. 40, 46. It means, not that the words should be forced out of their natural meaning, but simply that they should receive a fair and reasonable interpretation with respect to the objects and purposes of the instrument. Lawrence v. McCalmont, 2 How. 426, 11 L.Ed. 326.

CONSTRUCTIVE. That which is established by the mind of the law in its act of *construing* facts, conduct, circumstances, or instruments; that which has not the character assigned to it in its own essential nature, but acquires such character in consequence of the way in which it is regarded by a rule or policy of law; hence, inferred, implied, made out by legal interpretation;—the word "legal" being sometimes used in lieu of "constructive." Middleton v. Parke, 3 App.D. C. 160.

As to constructive "Bailment," "Breaking," "Contempt," "Contracts," "Conversion," "Deliv-

ery," "Escape," "Fraud," "Larceny," "Malice," "Notice," "Possession," "Seisin," "Service of Process," "Total Loss," "Treason," and "Trusts," see those titles.

CONSTRUCTIVE ASSENT. An assent or consent imputed to a party from a construction or interpretation of his conduct; as distinguished from one which he actually expresses.

CONSTRUCTIVE AUTHORITY. Authority inferred or assumed to have been given because of the grant of some other antecedent authority. Middleton v. Parke, 3 App.D.C. 160.

CONSTRUCTIVE BREAKING INTO A HOUSE. A breaking made out by construction of law. As where a burglar gains an entry into a house by threats, fraud, or conspiracy. 2 Russ. Crimes, 9, 10; Hawkins v. Commonwealth, 284 Ky. 33, 143 S.W.2d 853, 854.

CONSTRUCTIVE CRIME. Where, by a strained construction of a penal statute, it is made to include an act not otherwise punishable, it is said to be a "constructive crime," that is, one built up by the court with the aid of inference and implication. Ex parte McNulty, 77 Cal. 164, 19 P. 237, 11 Am.St.Rep. 257.

CONSTRUCTIVE EVICTION. As the term is used with reference to breach of the covenants of warranty and of quiet enjoyment, it means the inability of the purchaser to obtain possession by reason of a paramount outstanding title. Fritz v. Pusey, 31 Minn. 368, 18 N.W. 94.

With reference to the relation of landlord and tenant, there is a "constructive eviction" when the former, without intent to oust the latter, does some act which deprives the tenant of the beneficial enjoyment of the demised premises or materially impairs such enjoyment. Santrizos v. Public Drug Co., 143 Minn. 222, 173 N.W. 563, 564. Any disturbance of the tenant's possession by the landlord whereby the premises are rendered unfit or unsuitable for occupancy in whole or in substantial part for the purposes for which they were leased amounts to a constructive eviction, if the tenant so elects and surrenders his possession. Murry v. Merchants' Southwest Transfer & Storage Co., 98 Okl. 270, 225 P. 547, 549. There must be injurious interference with tenant's possession, substantial deprivation of tenant's beneficial use of premises, and material impairment of tenant's beneficial enjoyment of premises, so that he is compelled to vacate. Ben Hur Holding Corporation v. Fox, 263 N.Y.S. 695, 147 Misc. 300.

CONSTRUCTIVE FORCE. This has been said to be an acquiescence to an act obtained through duress or fear of personal violence. Shepherd v. State, 135 Ala. 9, 12, 33 So. 266.

With regard to rape, the force necessary to constitute the offense need not be actual, but may be constructive or implied. 52 C.J. p. 1018.

As regards robbery, a taking by force is the gist of the crime, but the force may be either actual or constructive. 54 C.J. p. 1016. " 'Constructive force' is anything which produces fear sufficient to suspend the power of resistance and prevent the free exercise of the will." Montsdoca v. State, 84 Fla. 82, 93 So. 157, 159, 27 A.L.R. 1291. "Actual force is applied to the body, constructive is by threatening words or gestures and operates on the mind." Tones v. State, 48 Tex.Cr. 363, 88 S.W. 217, 122 Am.St.Rep. 759, 1 L.R.A.,N.S., 1024.

CONSTRUCTIVE LOSS. One resulting from such injuries to the property, without its destruction, as render it valueless to the assured or prevent its restoration to the original condition except at a cost exceeding its value.

CONSTRUCTIVE MORTGAGE. A deed absolute on its face but intended as a mortgage is sometimes referred to as a "constructive mortgage," or, more commonly perhaps, as an "equitable mortgage." See Mortgage.

CONSTRUCTIVE TAKING. A phrase used in the law to characterize an act not amounting to an actual appropriation of chattels, but which shows an intention to convert them to his use; as if a person intrusted with the possession of goods deals with them contrary to the orders of the owner.

CONSTRUCTIVE VACANCY IN PUBLIC OFFICE. When the incumbent has no legal right or claim to continue in office, but can be legally replaced by another functionary. State ex rel. Satterthwaite v. Stover, 5 W.W.Harr. 85, 159 A. 239, 241.

CONSTRUCTIVE WILLFULNESS. Intentional disregard of a known duty necessary to the safety of a person, and an entire absence of care for the life, the person, or the property of others, such as exhibits a conscious indifference to consequences. Collins v. Missouri-Illinois R. Co., 233 Ill. App. 545, 551; Hughes v. Medendorp, 294 Ill.App. 424, 13 N.E.2d 1015, 1018.

CONSTRUE. To put together; to arrange or marshal the words of an instrument. To ascertain the meaning of language by a process of arrangement and inference. See Construction.

CONSTUPRATE. To ravish, debauch, violate, rape. See Harper v. Delp, 3 Ind. 230; Koenig v. Nott, 2 Hilt. (N.Y.) 329.

CONSUETUDINARIUS. In ecclesiastical law. A ritual or book, containing the rites and forms of divine offices or the customs of abbeys and monasteries.

CONSUETUDINARY LAW. Customary law. Law derived by oral tradition from a remote antiquity. Bell.

CONSUETUDINES. In old English law. Customs. Thus, *consuetudines et assisa forestce,* the customs and assise of the forest.

CONSUETUDINES FEUDORUM. (Lat. feudal customs.) A compilation of the law of feuds or fiefs in Lombardy, made A.D. 1170. It is of great authority.

CONSUETUDINIBUS ET SERVICIIS. In old English law. A writ of right close, which lay against a tenant who deforced his lord of the rent or service due to him. Reg. Orig. 159; Fitzh. Nat. Brev. 151.

CONSUETUDO. Lat. A custom; .an established usage or practice. Co. Litt. 58, 58b; Tolls; duties; taxes.

CONSUETUDO ANGLICANA. The custom of England; the ancient common law, as distinguished from *lex,* the Roman or civil law.

CONSUETUDO CONTRA RATIONEM INTRODUCTA POTIUS USURPATIO QUAM CONSUETUDO APPELLARI DEBET. A custom introduced against reason ought rather to be called a "usurpation" than a "custom." Co.Litt. 113.

CONSUETUDO CURIAE. The custom or practice of a court. Hardr. 141.

CONSUETUDO DEBET ESSE CERTA; NAM INCERTA PRO NULLA HABETUR. Da$^{y}$. 33. A custom should be certain; for an uncertain custom is considered null.

CONSUETUDO EST ALTERA LEX. Custom is another law. 4 Coke, 21.

CONSUETUDO EST OPTIMUS INTERPRES LEGUM. 2 Inst. 18. Custom is the best expounder of the laws.

CONSUETUDO ET COMMUNIS ASSUETUDO VINCIT LEGEM NON SCRIPTAM, SI SIT SPECIALIS; ET INTERPRETATUR LEGEM SCRIPTAM, SI LEX SIT GENERALIS. Jenk. Cent. 273. Custom and common usage overcomes the unwritten law, if it be special; and interprets the written law, if the law be general.

CONSUETUDO EX CERTA CAUSA RATIONABILI USITATA PRIVAT COMMUNEM LEGEM. A custom, grounded on a certain and reasonable cause, supersedes the common law. Litt. § 169; Co. Litt. 113; Broom, Max. 919.

CONSUETUDO, LICET SIT MAGNIE AUCTORITATIS, NUNQUAM TAMEN, PRZEJUDICAT MANIFESTIE VERITATI. A custom, though it be of great authority, should never prejudice manifest truth. 4 Coke, 18.

CONSUETUDO LOCI OBSERVANDA EST. Litt. § 169. The custom of a place is to be observed.

CONSUETUDO MANERII ET LOCI OBSERVANDA EST. 6 Coke, 67. A custom of a manor and place is to be observed.

CONSUETUDO MERCATORUM. Lat. The custom of merchants, the same with *lex mercatoria.*

CONSUETUDO NEQUE INJURIA ORIRI NEQUE TOLLI POTEST. Lofft, 340. Custom can neither arise from nor be taken away by injury.

CONSUETUDO NON TRAHITUR IN CONSEQUENTIAM. 3 Keb. 499. Custom is not drawn into consequence. 4 Jur. (N.S.) Ex. 139.

CONSUETUDO PRIESCRIPTA ET LEGITIMA VINCIT LEGEM. A prescriptive and lawful custom overcomes the law. Co. Litt. 113; 4 Coke, 21.

CONSUETUDO REGNI ANGLLE EST LEX ANGLUE. Jenk. Cent. 119. The custom of the kingdom of England is the law of England. See 2 Bl. Comm. 422.

CONSUETUDO SEMEL REPROBATA NON P0TEST AMPLIUS INDUCI. A custom once disallowed cannot be again brought forward, [or relied on]. Da$^{y}$. 33.

CONSUETUDO TOLLIT COMMUNEM LEGEM. Co. Litt. 33b. Custom takes away the common law.

CONSUETUDO VINCIT COMMUNEM LEGEM. Custom overrules common law. 1 Rop. H. & W. 351; Co. Litt. 33b.

CONSUETUDO VOLENTES DUCIT, LEX NOLENTES TRAHIT. Custom leads the willing, law compels [drags] the unwilling. Jenk. Cent. 274.

CONSUL.

International Law

An officer of a commercial character, appointed by the different states to watch over the mercantile interests of the appointing state and of its subjects in foreign countries. There are usually a number of consuls in every maritime country, and they are usually subject to a chief consul, who is called a "consul general." Schunior v. Russell, 18 S.W. 484, 83 Tex. 83.

Old English Law

An ancient title of an earl.

Roman Law

During the' republic, the name "consul" was given to the chief executive magistrate, two of whom were chosen annually. The office was continued under the empire, but its powers and prerogatives were greatly reduced. The name is supposed to have been derived from *consulo,* to consult, because these officers consulted with the senate on administrative measures.

The word "consul" has two meanings: (1) It denotes an officer of a particular grade in the consular service; (2) it has a broader generic sense, embracing all consular officers. Dainese v. U. S., 15 Ct.C1. 64.

See, also, Foreign Service Act of 1946, 22 U.S.C.A. § 801 et seq.

CONSULAR COURTS. Courts held by the consuls of one country, within the territory of another, under authority given by treaty, for the settlement of civil cases. In some instances they have also a criminal jurisdiction, but in this respect are subject to review by the courts of the home government. See Rev.St. U.S. § 4083 (22 U.S.C.A. § 141.)

CONSULTA ECCLESIA. In ecclesiastical law. A church full or provided for. Cowell.

CONSULTARY RESPONSE. The opinion of a court of law on a special case.

CONSULTATION. A writ whereby' a cause which has been wrongfully removed by prohibition out of an ecclesiastical court to a temporal court is returned to the ecclesiastical court. Phillim. Ecc. Law, 1439. Deliberation of persons on some subject. State v. District Court of Third Judicial Dist. in and for Powell County, 85 Mont. 215, 278 P. 122, 125.

A conference between the counsel engaged in a case, to discuss its questions or arrange the method of conducting it.

In French law. The opinion of counsel upon a point of law submittted to them.

CONSULTO. Lat. In the civil law. Designedly; intentionally. Dig. 28, 41.

CONSUMER. One who uses economic goods and so diminishes or destroys their utilities; opposed to producer. Ex parte Mehlman, 127 Tex.Cr.R. 257, 75 S.W.2d 689, 690.

CONSUMMATE, *adj.* Completed; as distinguished from *initiate,* or that which is merely begun. The husband of a woman seised of an estate of inheritance becomes, by the birth of a child, tenant by the curtesy *initiate,* and may do many acts to charge the lands, but his estate is not *consummate* till the death of the wife. 2 Bl. Comm. 126, 128; Co. Litt. 30a.

CONSUMMATE. v. To finish by completing what was intended; bring or carry to utmost point or degree; carry or bring to completion; finish; perfect; fulfill; achieve. American Mercantile Corporation v. Spielberg, C.C.A.N.Y., 262 F. 492, 496; Purcell v. Firth, 175 Cal. 746, 167 P. 379, 380; Oregon Home Builders v. Montgomery Inv. Co., 94 Or. 349, 184 P. 487, 492; Dahlinger v. Commissioner of Internal Revenue, C.C.A., 51 F.2d 662, 663.

CONSU3DIATE LIEN. A term which may be used to describe the lien of a judgment when a motion for a new trial has been denied (the lien having theretofore been merely inchoate). Sterling v. Parker-Washington Co., 185 Mo.App. 192, 170 S.W. 1156, 1159.

CONSUM3IATION. The completion of a thing; the completion of a marriage between two affianced persons by cohabitation. Sharon v. Sharon, 79 Cal. 633, 22 P. 26.

CONSUMPTION. Act or process of consuming; waste; decay; destruction; and using up of anything, as food, heat, or time. Moore v. Pleasant *Hasler* Const. Co., 50 Ariz. 370, 72 P.2d 573, 578. Destruction by use. Revzan v. Nudelman, 370 Iii. 180, 18 N.E.2d 219, 222.

CONTAGIOUS ABORTION. A disease of cows generally contracted through the digestive tract from infected food which causes premature birth of calves. Gesme v. Potter, 118 Or. 621, 247 P. 765, 766.

CONTAGIOUS DISEASE. One capable of being transmitted by mediate or immediate contact. Ex parte Liang suck Chew, D.C.Mass., 296 F. 183. See Infection.

CONTANGO. A double bargain, consisting of a sale for cash of stock previously bought which the broker does not wish to carry, and a repurchase for the re-settlement two weeks ahead of the same stock at the same price as at the sale plus interest accrued up to the date of that settlement. The rate of interest is called a "contango" and contango days are the two days during the settlement when these arrangements are in effect.

CONTEK. L. Fr. A contest, dispute, disturbance, opposition, Ri'itt. c. 42; Kelham. *Conteckours;* brawlers; disturbers of the peace. Britt. c. 29.

CONTEMNER. One who has committed contempt of court. Wyatt v. People, 17 Colo. 252, 28 P. 961.

CONTEMPLATE. To view or consider with continued attention; to regard thoughtfully; to have in view as contingent or probable as an end or intention. Wright v. Fuel Oil Co., Mo., 342 Mo. 173, 114 S.W.2d 959, 962. To ponder, to study, to plan, to meditate, to reflect. In re Thompson's Estate, 72 Utah, 17, 269 P. 103, 115.

CONTEMPLATION. The act of the mind in considering with attention. Continued attention of the mind to a particular subject. Consideration of an act or series of acts with the intention of doing or adopting them. The consideration of an event or state of facts with the expectation that it will transpire.

CONTEMPLATION OF BANKRUPTCY. Contemplation of the breaking up of one's business or an inability to continue it; knowledge of, and action with reference to, a condition of bankruptcy or ascertained insolvency, coupled with an intention to commit what the law declares to be an "act of bankruptcy," or to make provision against the consequences of insolvency, or to defeat the general distribution of assets which would take place under a proceeding in bankruptcy. Buckingham v. McLean, 13 How. 167, 14 L.Ed. 90; In re Carmichael, D.C.Iowa, 96 F. 594.

CONTEMPLATION OF DEATH. The apprehension or expectation of approaching dissolution; not that general expectation which every mortal entertains, but the apprehension which arises from some presently existing sickness or physical condition or from some impending danger. As applied to transfers of property, the phrase "in contemplation of death" means that thought of death is the impelling cause of transfer and that motive which induces transfer is of sort which leads to testamentary disposition and is practically equivalent to "causa mortis." In re Cornell's Estate, 73 N.Y.S. 32, 66 App.Div. 162; Nicholas v. Martin, 128 N.J.Eq. 344, 15 A.2d 235, 243; Pate v. C. I. R., C.C.A.8, 149 F.2d 669, 670.

CONTEMPLATION OF INSOLVENCY. Knowledge of, and action with reference to, an existing or contemplated state of insolvency, with a

design to make provision against its results or to defeat the operation of the insolvency laws. Flockhart Foundry Co. v. Cox Automatic Pipe Bending Co., 95 N.J.Eq. 382, 123 A. 151, 152.

CONTEMPORANEA EXPOSITIO. Lat. Contemporaneous exposition, or construction; a construction drawn from the *time* when, and the circumstances under which, the subject-matter to be construed, as a statute or custom, originated.

CONTEMPORANEA EXPOSITIO EST OPTIMA ET FORTISSIMA IN LEGE. Contemporaneous exposition is the best and strongest in the law. 2 Inst. 11. A statute is best explained by following the construction put upon it by judges who lived at the *time* it was made, or soon after. 10 Coke, 70; Broom, Max. 682.

CONTEMPT. A willful disregard or disobedience of a public authority.

CONTEMPT OF COURT. Any act which is calculated to embarrass, hinder, or obstruct court in administration of justice, or which is calculated to lessen its authority or its dignity. Ex parte Hobrook, 133 Me. 276, 177 A. 418, 420. Committed by a person who does any act in willful contravention of its authority or dignity, or tending to impede or frustrate the administration of justice, or by one who, being under the court's authority as a party to a proceeding therein, willfully disobeys its lawful orders or fails to comply with an undertaking which he has given. Snow v. Hawkes, 183 N.C. 365, 111 S.E. 621, 622, 23 A.L.R. 183.

Classification

Contempts are of two kinds, direct and constructive.

Direct contempts are those committed in the immediate view and presence of the court (such as insulting language or acts of violence) or so near the presence of the court as to obstruct or interrupt the due and orderly course of proceedings. These are punishable summarily. They are also called "criminal" contempts, but that term is better used in contrast with "civil" contempts. See *infra.* State v. McClaugherty, 33 W.Va. 250, 10 S.E. 407. Pelletier v. Glacier County, Mont., 107 Mont. 221, 82 P.2d 595, 597.

Constructive (or indirect) contempts are those which arise from matters not occurring in or near the presence of the court, but which tend to obstruct or defeat the administration of justice, and the term is chiefly used with reference to the failure or refusal of a party to obey a lawful order, injunction, or decree of the court laying upon him a duty of action or forbearance. Maryott v. Maryott, 124 Neb. 274, 246 N.W. 343.

Constructive contempts were formerly called "consequential," and this term is still in occasional use.

Contempts are also classed as civil or criminal. The former are those quasi contempts which consists in the failure to do something which the party is ordered by the court to do for the benefit or advantage of another party to the proceeding before the court, while criminal contempts are acts done in disrespect of the court or its process or which obstruct the administration of justice or tend to bring the court into disrespect. A civil contempt is not an offense against the dignity of the court, but against the party in whose behalf the mandate of the court was issued, and a fine is imposed for his indemnity. But criminal contempts are offenses or injuries offered to the court, and a fine or imprisonment is imposed upon the contemnor for the purpose of punishment. Staley v. South Jersey Realty Co., 90 A. 1042, 1043, 83 N.J.Eq. 300, L.R.A.1917B, 113, Ann.Cas.1916E, 955; Fenton v. Walling, C.C.A.Cal., 139 F.2d 608, 609.

CONTEMPT OF CONGRESS, LEGISLATURE, or PARLIAMENT. Whatever obstructs or tends to obstruct the due course of proceeding of either house, or grossly reflects on the character of a member of either house, or imputes to him what it would be a libel to impute to an ordinary person, is a contempt of the house, and thereby a breach of privilege. Sweet.

CONTEMPTIBILITER. Lat. Contemptuously.

In old English law. Contempt, contempts. Fleta, lib. 2, c. 60, § 35.

CONTENEMENTUM. See Wainagium; Contentment.

CONTENTIOUS. Contested; adversary; litigated between adverse or contending parties; a judicial proceeding not merely *ex parte* in its character, but comprising attack and defense as between opposing parties, is so called. The litigious proceedings in ecclesiastical courts are sometimes said to belong to its "contentious" jurisdiction, in contradistinction to what is called its "voluntary" jurisdiction, which is exercised in the granting of licenses, probates of wills, dispensations, faculties, etc.

CONTENTIOUS JURISDICTION. In English ecclesiastical law. That branch of the jurisdiction of the ecclesiastical courts which is exercised upon adversary or *contentious* (opposed, litigated) proceedings.

CONTENTIOUS POSSESSION. In stating the rule that the possession of land necessary to give rise to a title by prescription must be a "contentious" one, it is meant that it must be based on opposition to the title of the rival claimant (not in recognition thereof or subordination thereto) and that the opposition must be based on good grounds, or such as might be made the subject of litigation. Railroad Co. v. McFarlan, 43 N.J.L. 621.

CONTENTMENT, CONTENEMENT. A man's countenance or credit, which he has together with, and by reason of, his freehold; or that which is necessary for the support and maintenance of men, agreeably to their several qualities or states of life. Wharton; Cowell.

Comfort; consolation; ease; enjoyment; happiness; pleasure; satisfaction. National Surety Co. v. Jarrett, 95 W.Va. 420, 121 S.E. 291, 295.

CONTENTS. The contents of a promissory note or other commercial instrument or chose in action means the specific sum named therein and payable by the terms of the instrument. Trading Co. v. Morrison, 20 S.Ct. 869, 178 U.S. 262, 44 L. Ed. 1061.

CONTENTS AND NOT CONTENTS. In parliamentary law. The "contents" are those who, in the house of lords, express assent to a bill; the "not" or "non contents" dissent. May, Parl. Law, cc. 12, 357.

CONTENTS UNKNOWN. Words sometimes annexed to a bill of lading of goods in cases. Their meaning is that the master only means to acknowledge the shipment, in good order, of the cases, as to their external condition. Miller v. Railroad Co., 90 N.Y. 433, 43 Am.Rep. 179.

CONTERMINOUS. Adjacent; adjoining; having a common boundary; coterminous.

CONTEST, v. To make defense to an adverse claim in a court of law; to oppose, resist, or dispute the case made by a plaintiff. Pratt v. Breckinridge, 112 Ky. 1, 65 S.W. 136; Parks v. State, 100 Ala. 634, 13 So. 756. To strive, to win or hold; to controvert, litigate, call in question, challenge; to defend, as a suit or other proceeding. Equitable Life Assur. Soc. of the United States v. First Nat. Bank of Birmingham, C.C.A.Ala., 113 F.2d 272, 274.

CONTESTATIO LITIS. In Roman law. Contestation of suit; the framing an issue; joinder in issue. The formal act of both the parties with which the proceedings *in jure* were closed when they led to a judicial investigation, and by which the neighbors whom the parties brought with them were called to testify. Mackeld, Rom.Law, § 219.

In old English law. Coming to an issue; the issue so produced. Crabb, Eng.Law, 216.

CONTESTATIO LITIS EGET TERMINOS CONTRADICTARIOS. An issue requires terms of contradiction. Jenks Cent. 117. To constitute an issue, there must be an affirmative on one side and a negative on the other.

CONTESTATION OF SUIT. In an ecclesiastical cause, that stage of the suit which is reached when the defendant has answered the libel by giving in an allegation.

CONTESTED ELECTION. This phrase has no technical or legally defined meaning. An election may be said to be contested whenever an objection is formally urged against it which, if found to be true in fact, would invalidate it. This is true both as to objections founded upon some constitutional provision and to such as are based on statutes. Robertson v. State, 109 Ind. 116, 10 N.E. 600.

CONTEXT. The context of a particular sentence or clause in a statute, contract, will, etc., comprises those parts of the text which immediately precede and follow it. The context may sometimes be scrutinized, to aid in the interpretation of an obscure passage.

CONTIGUOUS. In close proximity; near, though not in contact; neighboring; adjoining; near in succession; in actual close contact; touching; bounded or traversed by. The term is not synonymous with "vicinal." Ehle v. Tenney Trading Co., 56 Ariz. 241, 107 P.2d 210, 212.

CONTIGUOUS AND COMPACT. In respect of school district, territory so closely united and so nearly adjacent to the school building that all the children residing in the district, their ages considered, may conveniently travel from *their* homes to the school building and return in a reasonable time and with a reasonable degree of comfort. People v. Simpson, 308 Ill. 418, 139 N.E. 890, 893; People v. Dodds, 310 Ill. 607, 142 N.E. 241, 242.

CONTINENCIA. In Spanish law. Continency or unity of the proceedings in a cause. White, New Recop. b. 3, tit. 6, c. 1.

CONTINENS. In the Roman law. Continuing; holding together. Adjoining buildings were said to be *continentia.*

CONTINENTAL. Pertaining or relating to a continent; characteristic of a continent; as broad in scope or purpose as a continent. Continental Ins. Co. v. Continental Fire Ass'n, C.C.Tex., 96 F. 848.

CONTINENTAL CONGRESS. The first national legislative assembly in the United States, which met in 1774, in pursuance of a recommendation made by Massachusetts and adopted by the other colonies. In this congress all the colonies were represented except Georgia. The delegates were in some cases chosen by the legislative assemblies in the states; in others by the people directly. The powers of the congress were undefined, but it proceeded to take measures and pass resolutions which concerned the general welfare and had regard to the inauguration and prosecution of the war for independence. Black, Const.Law (3d Ed.) 40; 1 Story, Const. §§ 198-217.

CONTINENTAL CURRENCY. Paper money issued under the authority of the continental congress. Wharton v. Morris, 1 Da11. 125, 1 L.Ed. 65.

CONTINENTIA. In old English practice. Continuance or connection. Applied to the proceedings in a cause. Bract. fol. 362b.

CONTINGENCY. Quality of being contingent or casual; the possibility of coming to pass; an event which may occur; a possibility; a casualty. Vandegrift v. Riley, 30 P.2d 516, 523, 220 Cal. 340. A fortuitous event, which comes without design, foresight, or expectation. People v. Yonkers, 39 Barb. (N.Y.) 272; American Ins. Co. v. Black, 46 Ga.App. 471, 168 S.E. 85.

CONTINGENCY OF A PROCESS. In Scotch law. Where two or more processes are so connected that the circumstances of the one are likely to throw light on the others, the process first enrolled is considered as the leading process, and

those subsequently brought into court, if not brought in the same division, may be remitted to it, *ob contingentiam,* on account of their nearness or proximity in character to it. The effect of remitting processes in this manner is merely to bring them before the same division of the court or same lord ordinary. In other respects they remain distinct. Bell.

CONTINGENCY WITH DOUBLE ASPECT. A remainder is said to be "in a contingency with double aspect," when there is another remainder limited on the same estate, not in derogation of the first, but as a substitute for it in case it should fail. Fearne, Rem. 373.

COlsITINGENT. Possible, but not assured; doubtful or uncertain, conditioned upon the occurrence of some future event which is itself uncertain, or questionable. Verdier v. Roach, 96 Cal. 467, 31 P. 554, synonymous with provisional. Robinson v. Edler, C.C.A.Nev., 78 F.2d 817, 819.

This term, when applied to a use, remainder, devise, bequest, or other legal right or interest, implies that no present interest exists, and that whether such interest or right ever will exist depends upon a future uncertain event. Jemison v. Blowers, 5 Barb. (N.Y.) 692.

As to contingent "Damages," "Fee," "Legacy," "Limitation," "Remainder," "Trust," and "Use," see those titles.

CONTINGENT CLAIM. One which has not accrued and which is dependent on some future event that may never happen. Hospes v. Car Co., 48 Minn. 174, 50 N.W. 1117, 15 L.R.A. 470, 31 Am. St.Rep. 637; Hicks v. Wilbur, 38 R.I. 268, 94 A. 872, 874; Cotting v. Hooper, Lewis & Co., 220 Mass. 273, 107 N.E. 931; In re Lexington Surety & Indemnity Co., 272 N.Y. 210, 5 N.E.2d 204, 205.

CONTINGENT ESTATE, INTEREST or RIGHT. An estate, interest or right which depends for its effect upon an event which may or may not happen; as an estate limited to a person not *in esse, or* not yet born. 2 Crabb, Real Prop. p. 4, § 946; Avery v. Curtiss, 108 Okl. 154, 235 P. 195, 197; Kahn v. Rockhill, 132 N.J.Eq. 188, 28 A.2d 34, 36.

CONTINGENT FUND. One set up by a municipality to pay expense items which will necessarily arise during the year but cannot appropriately be classified under any of the specific purposes for which other taxes are levied. First Nat. Bank of Norman v. City of Norman, 182 Okl. 7, 75 P.2d 1109, 1110.

CONTINGENT INTEREST IN PERSONAL PROPERTY. A future interest not transmissible to the representatives of the party entitled thereto, in case he dies before it vests in possession. Mozley & Whitley.

Thus, if a testator leaves the income of a fund to his wife for life, and the capital of the fund to be distributed among such of his children as shall be living at her death, the interest of each child during the widow's life-time is *contingent,* and in case of his death is not transmissible to his representatives. Mozley & Whitley.

CONTINGENT LIABILITY. One which is not now fixed and absolute, but which will become so in case of the occurrence of some future and uncertain event. Warren Co. v. C. I. R., C.C.A. Ga., 135 F.2d 679, 684, 685.

CONTINUAL CLAIM. In old English law. A formal claim made by a party entitled to enter upon any lands or tenements, but deterred from such entry by menaces, or bodily fear, for the purpose of preserving or keeping alive his right. It was called "continual," because it was required to be repeated once in the space of every year and day. It had to be made as near to the land as the party could approach with safety, and, when made in due form, had the same effect with, and in all respects amounted to, a legal entry. Litt. §§ 419-423; Co.Litt. 250a; 3 Bl.Comm. 175.

CONTINUANCE. The adjournment or postponement of an action pending in a court, to a subsequent day of the same or another term. Com. v. Maloney, 145 Mass. 205, 13 N.E. 482. Ferber v. Brueckl, 332 Mo. 892, 17 S.W.2d 524, 527.

Also the entry of a continuance made upon the record of the court, for the purpose of formally evidencing the postponement, or of connecting the parts of the record so as to make one continuous whole.

CONTINUANDO. In pleading. A form of allegation in which the trespass, criminal offense, or other wrongful act complained of is charged to have been committed on a specified day and to have "continued" to the present time, or is averred to have been committed at divers days and times within a given period or on a specified day and on divers other days and times between that day and another. This is called "laying the time with a continuando." State v. Brown, 10 Okl.Cr. 52, 133 P. 1143, 1144.

CONTINUING. Enduring; not terminated by a single act or fact; subsisting for a definite period or intended to cover or apply to successive similar obligations or occurrences.

As to continuing "Breach," "Consideration," "Conspiracy," "Covenant," "Damages," "Guaranty," "Nuisance," and "Offense," see those titles.

CONTINUOUS. Uninterrupted; unbroken; not intermittent or occasional; so persistently repeated at short intervals as to constitute virtually an unbroken series. Ingraham v. Hough, 46 N.C. 43. Connected, extended, or prolonged without cessation or interruption of sequence. Sullivan v. John Hancock Mut. Life Ins. Co. of Boston, Mo. App., 110 S.W.2d 870, 877.

As to continuous "Crime" and "Easements," see those titles.

CONTINUOUS ADVERSE USE. Is interchangeable with the term "uninterrupted adverse use." Davidson v. Nicholson, 59 Ind. 411.

CONTINUOUS INJURY. One recurring at repeated intervals, so as to be of repeated occurrence; not necessarily an injury that never ceases. Wood v. Sutcliffe, 8 Eng.Law & Eq. 217.

CONTINUOUSLY. Uninterruptedly; in unbroken sequence; without intermission or cessation; without intervening time; with continuity or continuation. U. S. v. Wooten, C.C.A.N.M., 40 F.2d 882, 887.

CONTIONES. General meetings of the Roman people. Launspach, State and Family in Early Rome 69.

CONTRA. Against, confronting, opposite to; on the other hand; on the contrary.

The word is used in many Latin phrases, as appears by the following titles. In the books of reports, *contra,* appended to the name of a judge or counsel, indicates that he held a view of the matter in argument contrary to that next before advanced. Also, after citation of cases in support of a position, *contra* is often prefixed to citations of cases opposed to it.

CONTRA BONOS MORES. Against good morals. Contracts *contra* bonos *mores* are void.

CONTRA FORMAM COLLATIONIS. In old English law. A writ that issued where lands given in perpetual alms to lay houses of religion, or to an abbot and convent, or to the warden or master of a hospital and his convent, to find certain poor men with necessaries, and do divine service, etc., were alienated, to the disherison of the house and church. By means of this writ the donor or his heirs could recover the lands. Reg.Orig. 238; Fitz. Nat.Brev. 210.

CONTRA FORMAM DONI. Against the form of the grant. See Formedon.

CONTRA FORMAM FEOFFAMENTI. In old English law. A writ that lay for the heir of a tenant, enfeoffed of certain lands or tenements, by charter of feoffment from a lord to make certain services and suits to his court, who was afterwards distrained for more services than were mentioned in the charter. Reg.Orig. 176; Old Nat.Brev. 162.

CONTRA FORMAM STATUTI. In criminal pleading. (Contrary to the form of the statute in such case made and provided.) The usual conclusion of every indictment, etc., brought for an offense created by statute.

CONTRA JUS BELLI. Lat. Against the law of war. 1 Kent.Comm. 6.

CONTRA JUS COMMUNE. Against common right or law; contrary to the rule of the common law. Bract. fol. 48b.

CONTRA LEGEM FACIT QUI ID FACIT QUOD LEX PROHIBIT; IN FRAUDEM VERO QUI, SALVIS VERBIS LEGIS, SENTENTIAM EJUS CIRCUMVENIT. He does contrary to the law who does what the law prohibits; he acts in fraud of the law who, the letter of the law being inviolate, uses the law contrary to its intention. Dig. 1, 3, 29.

CONTRA LEGEM TERRIE. Against the law of the land.

CONTRA NEGANTEM PRINCIPIA NON EST DISPUTANDUM. There is no disputing against one who denies first principles. Co.Litt. 343.

CONTRA NON VALENTEM AGERE NULLA CURRIT PRIESCRIPTIO. No prescription runs against a person unable to bring an action. Broom, Max. 903.

CONTRA OMNES GENTES. Against all people. Formal words in old covenants of warranty. Fleta, lib. 3, c. 14, § 11.

CONTRA PACEM. Against the peace. A phrase used in the Latin forms of indictments, and also of actions for trespass, to signify that the offense alleged was committed against the public peace, *1. e.,* involved a breach of the peace. The full formula was *contra pacem domini regis,* against the peace of the lord the king. In modern pleading, in this country, the phrase "against the peace of the commonwealth" or "of the people" is used.

CONTRA PROFERENTEM. Against the party who proffers or puts forward a thing. J. Zimmern's Co. v. Granade, 212 Ala. 172, 102 So. 210, 211.

CONTRA TABULAS. In the civil law. Against the will, (testament.) Dig. 37, 4.

CONTRA VADIUM ET PLEGIUM. In old English law. Against gage and pledge. Bract. fol. 15b.

CONTRA VERITATEM LEX NUNQUAM ALIQUID PERMITTIT. The law never suffers anything contrary to truth. 2 Inst. 252.

CONTRABAND. Against law or treaty; prohibited. Goods exported from or imported into a country against its laws. Brande. Articles, the importation or exportation of which is prohibited by law. State v. Butler, 148 S.C. 495, 146 S.E. 418, 419.

CONTRABAND OF WAR. Certain classes of merchandise, such as arms and ammunition, which, by the rules of international law, cannot lawfully be furnished or carried by a neutral nation to either of two belligerents; if found in transit in neutral vessels, such goods may be seized and condemned for violation of neutrality. The Peterhoff, 5 Wall. 58, 18 L.Ed. 564; Richardson v. Insurance Co., 6 Mass. 114, 4 Am.Dec. 92.

A recent American author on international law says that, "by the term 'contraband of war,' we now understand *a* class of articles of commerce which *neutrals* are prohibited from furnishing to either one of the belligerents, for the reason that, by so doing, injury is done to the other belligerent;" and he treats of the subject, chiefly, in its relation to commerce upon the high seas. Hall, Int.Law, 570, 592; Elrod v. Alexander, 4 Heisk. (Tenn.) 345.

CONTRABAND OIL. Oil produced contrary to state laws. Panama Refining Co. v. Railroad Commission of Texas, D.C.Tex., 16 F.Supp. 289, 291.

CONTRACAUSATOR. A criminal; one prosecuted for a crime.

CONTRACT. A promissory agreement between two or more persons that creates, modifies, or destroys a legal relation. Buffalo Pressed Steel Co. v. Kirwan, 138 Md. 60, 113 A. 628, 630; Mexican Petroleum Corporation of Louisiana v. North German Lloyd, D.C.La., 17 F.2d 113, 114.

An agreement, upon sufficient consideration, to do or not to do a particular thing. 2 Bl.Comm. 442; 2 Kent, Comm. 449. Justice v. Lang, 42 N.Y. 496, 1 Am.Rep. 576; Rabon v. State Finance Corporation, 203 S.C. 183, 26 S.E.2d 501, 502.

An agreement between two or more parties, preliminary Step in making of which is offer by one and acceptance by other, in which minds of parties meet and concur in understanding of terms. Lee v. Travelers' Ins. Co. of Hartford, Conn., 173 S.C. 185, 175 S.E. 429.

A deliberate engagement between competent parties, upon a legal consideration, to do, or abstain from doing, some act. Wharton; Smith v. Thornhill, Tex.Com.App. 25 S.W.2d 597, 599.

It is agreement creating obligation, in which there must be competent parties, subject-matter, legal consideration, mutuality of agreement, and mutuality of obligation, and agreement must not be so vague or uncertain that terms are not ascertainable. H. Liebes & Co. v. Klengenberg, C.C.A.Cal., 23 F.2d 611, 612.

A contract or agreement is either where a promise is made on one side and assented to on the other; or where two or more persons enter into engagement with each other by a promise on either side. 2 Steph.Comm. 54.

The writing which contains the agreement of parties, with the terms and conditions, and which serves as a proof of the obligation.

### Certain and Hazardous

Certain contracts are those in which the thing to be done is supposed to depend on the will of the party, or when, in the usual course of events, it must happen in the manner stipulated. Hazardous contracts are those in which the performance of that which is one of its objects depends on an uncertain event. Civ.Code La. 1776.

### Classification

Contracts may be classified on several different methods, according to the element in them which is brought into prominence. The usual classifications are as follows:

### Commutative and Independent

Commutative contracts are those in which what is done, given, or promised by one party is considered as an equivalent to or in consideration of what is done, given, or promised by the other. Civ.Code La. 1768; Ridings v. Johnson, 9 Sup.Ct. 72, 128 U.S. 212, 32 L.Ed. 401. Independent contracts are those in which the mutual acts or promises have no relation to each other, either as equivalents or as considerations. Civ.Code La. 1769.

### Conditional Contract

An executory contract the performance of which depends upon a condition. It is not simply an executory contract, since the latter may be an absolute agreement to do or not to do something, but it is a contract whose very existence and performance depend upon a contingency. Railroad Co. v. Jones, 2 Cold. (Tenn.) 584; French v. Osmer, 67 Vt. 427, 32 A. 254.

### Consensual and Real

Consensual contracts are such as are founded upon and completed by the mere agreement of the contracting parties, without atry external formality or symbolic act to fix the obligation. Real contracts are those in which it is necessary that there should be something more than mere consent, such as a loan of money, deposit or pledge, which, from their nature, require a delivery of the thing, *(res.)* Inst. 3, 14, 2; Id. 3, 15; Halifax, Civil Law, b. 2, c. 15, No. 1. In the common law a contract respecting real property (such as a lease of land for years) is, called a "real" contract. 3 Coke, 22a.

### Constructive Contract

Constructive contracts are such as arise when the law prescribes the rights and liabilities of persons who have not in reality entered into a contract at all, but between whom circumstances make it just that one should have a right, and the other be subject to a liability, similar to the rights and liabilities in cases of express contract. Donovan v. Kansas City, 352 Mo. 430, 175 S.W.2d 874, 884.

### Divisible and Indivisible

The effect of the breach of a contract depends in a large degree upon whether it is to be regarded as indivisible or divisible; *i. e.* whether it forms a whole, the performance of every part of which is a condition precedent to bind the other party, or is composed of several independent parts, the performance of any one of which will bind the other party *pro tanto.* The only test is whether the whole quantity of the things concerned, or the sum of the acts to be done, is of the essence of the contract. It depends, therefore, in the last resort, simply upon the intention of the parties. Integrity Flooring v. Zandon Corporation, 130 N.J.L. 244, 32 A.2d 507, 509.

When a consideration is entire and indivisible, and it is against law, the contract is void *in toto.* Frazier v. Thompson, 2 Watts & S. (Pa.) 235. When the consideration is divisible, and part of it is illegal, the contract is void only *pro tanto.* Harr.Contr. 132; Gelpcke v. Dubuque, 1 Wall. 220, 17 L.Ed. 530.

### Entire and Severable

An *entire* contract is one the consideration of which is entire on both sides. The entire fulfillment of the promise by either is a condition precedent to the fulfillment of any part of the promise by the other. Whenever, therefore, there is a contract to pay the gross sum for a certain and definite consideration, the contract is entire. A *severable* contract is one the consideration of which is, by its terms, susceptible of apportionment on either side, so as to correspond to the unascertained consideration on the other side, as a contract to pay a person the worth of his services so long as he will do certain work; or to give a certain price for every bushel of so much corn as

corresponds to a sample. Orenstein v. Kahn, 13 Del.Ch. 376, 119 A. 444, 446; Integrity Flooring v. Zandon Corporation, 130 N.J.L. 244, 32 A.2d 507, 509; Ruby v. United Sugar Cos., 56 Ariz. 535, 109 P.2d 845, 848.

Where a contract consists of many parts; which may be considered as parts of one whole, the contract is entire. When the parts may be considered as so many distinct contracts, entered into at one time, and expressed in the same instrument, but not thereby made one contract, the contract is a separable contract. But, if the consideration of the contract is single and entire, the contract must be held to be entire, although the subject of the contract may consist of several distinct and wholly independent items. 2 Pars.Cont. 517.

### Executed and Executory

Contracts are also distinguished into executed and executory; *executed,* where nothing remains to be done by either party, and where the transaction is completed at the moment that the arrangement is made, as where an article is sold and delivered, and payment therefor is made on the spot; *executory,* where some future act is to be done, as where an agreement is made to build a house in six months, or to do an act on or before some future day, or to lend money upon a certain interest, payable at a future time. Farrington v. Tennessee, 95 U.S. 683, 24 L.Ed. 558; Fox v. Kitton, 19 Ill. 532; Mather v. Mather, 25 Ca1.2d 582, 154 P.2d 684, 686.

But executed contracts are not properly contracts at all, except reminiscently. The term denotes rights in property which have been acquired by means of contract; but the parties are no longer bound by a contractual tie. Mettel v. Gales, 12 S.D. 632, 82 N.W. 181.

### Express and Implied

An express contract is an actual agreement of the parties, the terms of which are openly uttered or declared at the time of making it, being stated in distinct and explicit language, either orally or in writing. 2 Bl.Comm. 443; 2 Kent, Comm. 450; Linn v. Ross, 10 Ohio 414, 36 Am.Dec. 95; A. J. Yawger & Co. v. Joseph, 184 Ind. 228; 108 N.E. 774, 775; In re Pierce, Butler & Pierce Mfg. Co., D.C.N.Y., 231 F. 312, 318.

An implied contract is one not created or evidenced by the explicit agreement of the parties, but inferred by the law, as a matter of reason and justice from their acts or conduct, the circumstances surrounding the transaction making it a reasonable, or even a necessary, assumption that a contract existed between them by tacit understanding. Miller's Appeal, 100 Pa. 568, 45 Am.Rep. 394; Landon v. Kansas City Gas Co., C.C.A.Kan., 10 F.2d 263, 266; Caldwell v. Missouri State Life Ins. Co., 230 S.W. 566, 568, 148 Ark. 474; Cameron, to Use of Cameron, v. Eynon, 332 Pa. 529, 3 A.2d 423, 424; American La France Fire Engine Co., to Use of American La France & Foamite Industries, v. Borough of Shenandoah, C.C.A.Pa., 115 F.2d 806, 867.

Implied contracts are sometimes subdivided into those "implied in fact" and those "implied in law," the former being covered by the definition just given, while the latter are obligations imposed upon a person by the law, not in pursuance of his intention and agreement, either expressed or implied, but even against his will and design, because the circumstances between the parties are such as to render it just that the one should have a right, and the other a corresponding liability, similar to those which would arise from a contract between them. This kind of obligation therefore rests on the principle that whatsoever it is certain a man ought to do that the law will suppose him to have promised to do. And hence it is said that, while the liability of a party to an express contract arises directly from the contract, it is just the reverse in the case of a contract "implied in law," the contract there being implied or arising from the liability. Bliss v. Hoyt, 70 Vt. 534, 41 A. 1026; Kellum v. Browning's Adm'r, 231 Ky. 308, 21 S.W.2d 459, 465. But obligations of this kind are not properly contracts at all, and should not be so denominated. There can be no true contract without a mutual and concurrent intention of the parties. Such obligations are more properly described as "quasi contracts." Union Life Ins. Co. v. Glasscock, 270 Ky. 750, 110 S.W.2d 681, 686, 114 A. L.R. 373.

### Fair and Reasonable Contract

See Fair and Reasonable Contract.

### Gratuitous and Onerous

Gratuitous contracts are those of which the object is the benefit of the person with whom it is made, without any profit or advantage received or promised as a consideration for it. It is not, however, the less gratuitous if it proceed either from gratitude for a benefit before received or from the hope of receiving one thereafter, although such benefit be of a pecuniary nature. Onerous contracts are those in which something is given or promised as a consideration for the engagement or gift, or some service, interest, or condition is imposed on what is given or promised, although unequal to it in value. Civ.Code La.1773, 1774; Penitentiary Co. v. Nelms, 65 Ga. 505, 38 Am.Rep. 793. A gratuitous contract is sometimes called a contract of beneficence. Howe, Studies in the Civil Law 107.

### Joint and Several

A joint contract is one made by two or more promisors, who are jointly bound to fulfill its obligations, or made to two or more promisees, who are jointly entitled to require performance of the same. A contract may be "several" as to any one of several promisors or promisees, if he has a legal right (either from the terms of the agreement or the nature of the undertaking) to enforce his individual interest separately from the other parties. Jens-Marie Oil Co. v. Rixse, 72 Okl. 93, 178 P. 658. Generally all contracts are joint where the interest of the parties for whose benefit they are created is joint, and separate where that interest is separate. Shurtleff v. Udall, 97 Vt. 156, 122 A. 465, 468.

### Mutual Interest, Mixed, etc.

Contracts of "mutual interest" are such as are entered into for the reciprocal interest and utility of each of the parties; as sales, exchange, partnership, and the like. "Mixed" contracts are those by which one of the parties confers a benefit on the other, receiving something of inferior value in return, such as a donation subject to a charge. Contracts "of beneficence" are those by which only one of the contracting parties is benefited; as loans, deposit and mandate. Poth.Obl. 1, 1, 1, 2.

### Parol

A contract not entirely in writing. Louisville, N. A. and C. Ry. Co. v. Reynolds, 118 Ind. 170, 173, 20 N.E. 711.

A written contract, which leaves some essential term thereof to be shown by parol, is only "parol contract" not enforceable under statute of fraud. Sheldmyer v. Bias, 112 Ind.App. 522, 45 N.E.2d 347, 349.

### Personal Contract

A contract relating to personal property, or one which so far involves the element of personal knowledge or skill or personal confidence that it can be performed only by the person with whom made, and therefore is not binding on his executor. See Janin v. Browne, 59 Cal. 44; Lucas v. J. H. Gross Motor Car Co., 27 Ohio App. 183, 161 N.E. 362, 363.

### Pre-contract

An obligation growing out of a contract or contractual relation, of such a nature that it debars the party from legally entering into a similar contract at a later time with any other person; particularly applied to marriage.

### Principal and Accessory

A principal contract is one entered into by both parties on their own account or in the several qualities they assume. It is one which stands by itself, justifies its own existence, and is not subordinate or auxiliary to any other. Accessory contracts are those made for assuring the performance of a prior contract, either by the same parties or by others, such as suretyship, mortgage, and pledge. Civ.Code La. art. 1771.

### Quasi Contracts

In the civil law. A contractual relation arising out of transactions between the parties which give them mutual rights and obligations, but do not involve a specific and express convention or agreement between them. Keener, Quasi Contr. 1; Elbert County v. Brown, 16 Ga.App. 834, 86 S.E. 651, 665. The lawful and purely voluntary acts of a man, from which there results any obligation whatever to a third person, and sometimes a reciprocal obligation between the parties. Civ. Code La. art. 2293.

Persons who have not contracted with each other are often regarded by the Roman law, under a certain state of facts, as if they had actually concluded a convention between themselves. The legal relation which then takes place between these persons, which has always a similarity to a contract obligation, is therefore termed *"obligatio quasi ex contractu."* Such a relation arises from the conducting of affairs without authority, *(negotiorum gestio,)* from the payment of what was not due, *(solutio indebiti,)* from tutorship and curatorship, and from taking possession of an inheritance. Mackeld.Rom.Law § 491.

Legal fiction invented by common law courts to permit recovery by contractual remedy of assumpsit in cases where, in fact, there is no contract, but where circumstances are such that justice warrants a recovery as though there had been a promise. Clark v. Peoples Savings and Loan Ass'n of De Kalb County, 221 Ind. 168, 46 N.E.2d 681, 682, 144 A.L.R. 1495. It is not based on intention or consent of the parties, but Is founded on considerations of justice and equity, and on doctrine of unjust enrichment. Bruggeman v. Independent School Dist., No. 4, Union Tp., Mitchell County, 227 Iowa 661, 289 N.W. 5, 8, 11.

It is not in fact a contract, but an obligation which the law creates in absence of any agreement, when and because the acts of the parties or others have placed in the possession of one person money, or its equivalent, under such circumstances that in equity and good conscience he ought not to retain it. Grossbier v. Chicago, St. P., M. & O. Ry. Co., 173 Wis. 503, 181 N.W. 746, 748; It is an implication of law. First Nat. Bank v. Matlock, 99 Okl. 150, 226 P. 328, 331, 36 A.L.R. 1088; Caldwell v. Missouri State Life Ins. Co., 148 Ark. 474, 230 S.W. 566, 568.

It is what was formerly known as the contract implied in law; it has no reference to the intentions or expressions of the parties. The obligation is imposed despite, and frequently in frustration of their intention. Town of Balkan v. Village of Buhl, 158 Minn. 271, 197 N.W. 266, 35 A. L. R. 470.

### Record, Specialty, Simple

Contracts of record are such as are declared and adjudicated by courts of competent jurisdiction, or entered on their records, including judgments, recognizances, and statutes staple. Hardeman v. Downer, 39 Ga. 425. These are not properly speaking contracts at all, though they may be enforced by action like contracts. Specialties, or special contracts, are contracts under seal, such as deeds and bonds. Ludwig v. Bungart, 26 Misc. Rep. 247, 56 N.Y.S. 51. All others are included in the description "simple" contracts; that is, a simple contract is one that is not a contract of record and not under seal; it may be either written or oral, in either case, it is called a "parol" contract, the distinguishing feature being the lack of a seal. Stackpole v. Arnold, 11 Mass. 30, 6 Am. Dec. 150; 4 B. & Ald. 588; 2 Bla.Comm. 472.

### Special Contract

A contract under seal; a specialty; as distinguished from one merely oral or in writing not sealed. But in common usage this term is often used to denote an express or explicit contract, one which clearly defines and settles the reciprocal rights and obligations of the parties, as distinguished from one which must be made out, and its terms ascertained, by the inference of the law from the nature and circumstances of the transaction.

A special contract may rest in parol, and does not mean a contract by specialty; it is defined as one with peculiar provisions not found in the ordinary contracts relating to the same subject-matter. Midland Roofing Mfg. Co. v. Pickens, 96 S.C. 286, 80 S.E. 484, 485.

### Subcontract

A contract subordinate to another contract, made or intended to be made between the contracting parties, on one part, or some of them, and a stranger. 1 H.B1. 37, 45. One made under a prior contract. Mobley v. Leeper Bros. Lumber Co., 89 Okl. 95, 214 P. 174, 175.

Where 'a person has contracted for the *performance* of certain work *(e. g.,* to build a house,) and he in turn engages a third party to perform the whole or a part of that which is included in the original contract, *(e. g.,* to do the carpenter work,) his agreement with such third person *is* called *a* "subcontract," and such person *is* called *a* "sub-

contractor." Central Trust Co. v. Railroad Co., C.C.Ky., 54 F. 723 Lester v. Houston, 101 N.C. 605, 8 S.E. 366. The term "subcontractor" means one who has contracted with the original contractor for the performance of all or a part of the work or services which such contractor has himself contracted to perform. Republic Supply Co. v. Allen, Tex.Civ.App., 262 S.W. 113, 114.

Unconscionable Contract

One which no sensible man not under delusion, duress, or in distress would make, and such as no honest and fair man would accept. Franklin Fire Ins. Co. v. Noll, 115 Ind.App. 289, 58 N.E.2d 947, 949, 950.

Unilateral and Bilateral

A unilateral contract is one in which one party makes an express engagement or undertakes a performance, without receiving in return any express engagement or promise of performance from the other. Bilateral (or reciprocal) contracts are those by which the parties expressly enter into mutual engagements, such as sale or hire. Civ. Code La. art. 1765; Poth. Obl. 1, 1, 1, 2; Kling Bros. Engineering Works v. Whiting Corporation, 320 Ill.App. 630, 51 N.E.2d 1004, 1007. When the party to whom an engagement is made makes no express agreement on his part, the contract is called unilateral, even in cases where the law attaches certain obligations to his acceptance. La. Civ. Code, art. 1765. A contract is also said to be "unilateral" when there is a promise on one side only, the consideration on the other side being executed. McMahan v. McMahon, 122 S.C. 336, 115 S.E. 293, 294, 26 A.L.R. 1295.

Usurious Contract

See that title.

Written Contract

A "written contract" is one which in all its terms is in writing. Fey v. Loose-Wiles Biscuit Co., 147 Kan. 31, 75 P.2d 810, 813; and instrument signed by one party is orally accepted by other, Reeves Furniture Co. v. Simms, Tex.Civ.App., 59 S.W.2d 262, 263.

CONTRACT, ESTOPPEL BY. There are two sorts of "estoppel by contract," estoppel to deny truth of facts agreed on and settled by force of entering into contract, and estoppel arising from acts done under or in performance of contract. In re Schofield's Estate, 101 Colo. 443, 73 P.2d 1381. Finch v. Smith, 177 Okl. 307, 58 P.2d 850, 851.

"Estoppel by contract" is intended to embrace all cases in which there *is* an actual or virtual undertaking to treat a fact *as* settled. Jackson v. United Gas Public Service Co., 198 So. 633, 640, 196 La. 1. It means party is bound by terms of own contract until set aside or annulled for fraud, accident, or mistake. United Fidelity Life Ins. Co. v. Fowler, Tex.Civ.App., 38 S.W.2d 128, 131.

CONTRACT OF BENEVOLENCE. A contract made for the benefit of one of the contracting parties only, as a mandate or deposit.

CONTRACT OF RECORD. A contract of record is one which has been declared and adjudicated by a court having jurisdiction, or which is entered of record in obedience to, or *in* carrying out, the judgments of a court.

CONTRACT OF SALE. A contract by which one of the contracting parties, called the "seller," enters into an obligation to the other to cause him to have freely, by a title of proprietor, a thing, for the price of a certain sum of money, which the other contracting party, called the "buyer," on his part obliges himself to pay. Topzant v. Koshe, 242 Wis. 585, 9 N.W.2d 136, 138.

CONTRACT SYSTEM. As applied to state prisons, this phrase signifies that the labor of the prisoners is utilized by private persons or contractors, who thus secure the profits of such labor. People v. Hawkins, 157 N.Y. 1, 51 N.E. 257, 260, 42 L.R.A. 490, 68 Am.St.Rep. 736.

CONTRACTION. Abbreviation; abridgment or shortening of a word by omitting a letter or letters or a syllable, with a mark over the place where the elision occurs. This was customary in records written in the ancient "court hand," and is frequently found in the books printed in black-letter.

CONTRACTOR. This term is strictly applicable to any person who enters into a contract (Kent v. Railroad Co., 12 N.Y. 628), but is commonly reserved to designate one who, for a fixed price, undertakes to procure the performance of works on a large scale, or the furnishing of goods in large quantities, whether for the public or a company or individual. McCarthy v. Second Parish, 71 Me. 318, 36 Am.Rep. 320.

One who in pursuit of independent business undertakes to perform a job or piece of work, retaining in himself control of means, method and manner of accomplishing the desired result. Marion Malleable Iron Works v. Baldwin, 82 Ind.App. 206, 145 N.E. 559, 560.

CONTRACTUAL OBLIGATION. The obligation which arises from a contract or agreement.

CONTRACTUS. Lat. Contract; a contract; contracts.

CONTRACTUS BONZE FIDEL In Roman law. Contracts of good faith. Those contracts which, when brought into litigation, were not determined by the rules of the strict law alone, but allowed the judge to examine into the bona *fides* of the transaction, and to hear equitable considerations against their enforcement. In this they were opposed to contracts *stricti juris,* against which equitable defenses could not be entertained.

CONTRACTUS CIVILES. In Roman law. Civil contracts. Those contracts which were recognized as actionable by the strict civil law of Rome, or as being founded upon a particular statute, as distinguished from those which could not be enforced in the courts except by the aid of the praetor, who, through his equitable powers, gave an action upon them. The latter were called *"contractus prcetorii."*

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CONTRECTATIO. In the civil and old English law. Touching; handling; meddling. The act of removing a thing from its place in such a manner that, if the thing be not restored, it will amount to theft.

CONTRECTATIO REI ALIENZE, ANIMO FURAND!, EST FURTUM. Jenk. Cent. 132. The touching or removing of another's property, with an intention of stealing, is theft.

CONTREFACON. In French law. The offense of printing or causing to be printed a book, the copyright of which is held by another, without authority from him. Merl. Repert.

CONTRE-MAITRE. In French marine law. The chief officer of a vessel, who, in case of the sickness or absence of the master, commanded in his place. Literally, the countermaster.

CONTRIBUTE. To lend assistance or aid, or give something, to a common purpose; to have a share in any act or effect; to discharge a joint obligation. Christman v. Reichholdt, Mo.App., 150 S. W.2d 527, 532; James McCord Co. v. Citizens Hotel Co., Tex.Civ.App., 287 S.W. 906; Park v. Missionary Soc., 62 Vt. 19, 20 A. 107.

As applied to negligence signifies causal connection between injury and negligence, which transcends and is distinguished from negligent acts or omissions which play so minor a part in producing injuries that law does not recognize them as legal causes. Connellan v. Coffey, 122 Conn. 136, 187 A. 901, 903.

CONTRIBUTION. In the civil law. A partition by which the creditors of an insolvent debtor di• vide among themselves the proceeds of his property proportionably to the amount of their respective credits. Code La. art. 3556, par. 9. Division which is made among the heirs of the succession of the debts with which the succession is charged, according to the proportion which each is bound to bear. Civ.Code La. art. 1420.

In common law. The sharing of a loss or payment among several. The act of any one or several of a number of co-debtors, co-sureties, etc., in reimbursing one of their number who has paid the whole debt or suffered the whole liability, each to the extent of his proportionate share. Canosia Tp. v. Grand Lake Tp., 80 Minn. 357, 83 N. W. 346; Ratte v. Ratte, 260 Mass. 165, 156 N.E. 870, 871. Right of one who has discharged a common liability to recover of another also liable, the aliquot portion which he ought to pay or bear. St. Lewis v. Morrison, D.C.Ky., 50 F.Supp. 570, 572, 573. Parten v. First Nat. Bank & Trust Co., 283 N.W. 408, 412, 204 Minn. 200, 120 A.L.R. 962; Chapman v. Lamar-Rankin Drug Co., 64 Ga.App. 493, 13 S.E.2d 734, 737. Fidelity & Casualty Ins. Co. of New York v. Sears, Roebuck & Co., 124 Conn. 227, 199 A. 93, 94.

In maritime law. Where the property of one of several parties interested in a vessel and cargo has been voluntarily sacrificed for the common safety, (as by throwing goods overboard to lighten the vessel,) such loss must be made good by the contribution of the others, which *is* termed "general average," 3 Kent, Comm. 232-244; 1 Story, Eq. Jur. § 490.

CONTRIBUTION TO CAPITAL. A fund or property contributed by shareowners as financial basis for prosecution of corporation's business, and signifies resources whose dedication to users of the corporation is made the foundation for issuance of capital stock and which became irrevocably devoted to satisfaction of all obligations of corporation. Detroit Edison Co. v. Commissioner of Internal Revenue, C.C.A.6, 131 F.2d 619, 623.

CONTRIBUTIONE FACIENDA. In old English law. A writ that lay where tenants in common were bound to do some act, and one of them was put to the whole burthen, to compel the rest to make contribution. Reg. Orig. 175; Fitzh. Nat. Brev, 162.

CONTRIBUTORY, *n.* A person liable to contribute to the assets of a company which is being wound up, as being a member or (in some cases) a past member thereof. Mozley & Whitley.

CONTRIBUTORY, *adj.* Joining in the promotion of a given purpose; lending assistance to the production of a given result. Armstrong v. Green, 113 Okl. 254, 241 P. 789, 791.

As to contributory "Infringement" and "Negligence," see those titles.

CONTROL, v. To exercise restraining or directing influence over; regulate; restrain; dominate; curb; to hold from action; overpower; court, teract; govern. Owen v. Trail, 302 Mo. 292, 258 S. W. 699, 702; Hopkins v. Howard's Ex'x, 266 Ky. 685, 99 S.W.2d 810, 812.

To control a thing is to have the right to exercise a directing or governing influence over it. Trust Co. of New Jersey v. Greenwood Cemetery, 21 N.J.Misc. 169, 32 A.2d 519, 523.

CONTROL, *n.* Power or authority to manage, direct, superintend, restrict, regulate, direct, govern, administer, or oversee. State v. First State Bank of Jud, 52 N.D. 231, 202 N.W. 391, 402.

The "control" involved in determining whether "principal and agent relationship" or "master and servant relationship" is involved must be accompanied by power or right to order or direct. Mid-Continent Petroleum Corporation v. Vicars, 221 Ind. 387, 47 N.E.2d 972, 975.

Driver must at 'all times have automobile under control, means having it under such control that it can be stopped before doing injury to any person in any situation that is reasonably likely to arise under the circumstances. Kindt v. Reading Co., 352 Pa. 419, 43 A.2d 145, 147.

CONTROL OF CARBON. Such a chemical action upon the carbon in an alloy as will keep it largely in a combined graphitic state. Pittsburgh Iron, & Steel Foundries Co. *v.* Seaman-Sleeth Co., D.C. Pa., 236 F. 756, 760.

CONTROLLER. A comptroller, which see.

CONTROLMENT. In old English law, The controlling or checking of another officer's account; the keeping of a counter-roll.

CONTROVER. In old English law. An inventor or deviser of false news. 2 Inst. 227.

CONTROVERSIES ARISING IN BANKRUPTCY PROCEEDINGS. Within Bankruptcy Act § 24a, 11 U.S.C.A. § 47(a), investing Circuit Courts of Appeals with appellate jurisdiction, include those matters arising in the course of a bankruptcy proceeding, which are not mere steps in the ordinary administration of the bankrupt estate, but present distinct and separable issues, between the trustee and adverse claimants concerning the right and title to the bankrupt's estate. Handlan v. Bennett, C.C.A.W.Va., 51 F.2d 21, 23.

CONTROVERSY. A litigated question; adversary proceeding in a court of law; a civil action or suit, either at law or in equity; a justiciable dispute. Barber v. Kennedy, 18 Minn. 216 (Gil. 196); State v. Guinotte, 156 Mo. 513, 57 S.W. 281, 50 L. R.A. 787.

It differs from "case," which includes all suits, criminal as well as civil; whereas "controversy" is a civil and not a criminal proceeding. Chisholm v. Georgia, 2 Da11. 419, 431, 432, 1 L.Ed. 440.

CONTROVERT. To dispute; to deny; to oppose or contest; to take issue on. Reese v. Adamson, 297 Pa. 13, 146 A. 262, 263.

CONTUBERNIUM. In Roman law. The marriage of slaves; a permitted cohabitation.

CONTUMACE CAPIENDO. In English law. Excommunication in all cases of contempt in the spiritual courts is discontinued by 53 Geo. III, c. 127, § 2, and in lieu thereof, where a lawful citation or sentence has not been obeyed, the judge shall have power, after a certain period, to pronounce such person contumacious and in contempt, and to signify the same to the court of chancery, whereupon a writ *de contumace capiendo* shall issue from that court, which shall have the same force and effect as formerly belonged, in case of contempt, to a writ *de excommunicato capiendo.* (2 & 3 Wm. IV, c. 93; 3 & 4 Viet. c. 93.) Wharton; 1 Holdsw. Hist. Engl. Law App. XVIII. See Excommunication.

CONTUMACY. The refusal or intentional omission of a person who has been duly cited before a court to appear and defend the charge laid against him, or, if he is duly before the court, to obey some lawful order or direction made in the cause. In the former case it is called "presumed" contumacy; in the latter, "actual." The term is chiefly used in ecclesiastical law. See 3 Curt. Ecc. 1.

CONTUMAX. One accused of a crime who refuses to appear and answer to the charge. An outlaw.

CONTUMELY. Rudeness compounded of haughtiness and contempt; scornful insolence; despiteful treatment; disdain, contemptuousness in act or speech; disgrace. United States v. Strong, D. C.Wash., 263 F. 789, 796.

CONTUSE. To bruise; to injure or disorganize a part of without breaking the skin. Ansley v. Travelers Ins. Co., 27 Tenn.App. 720, 173 S.W.2d 702, 704.

CONTUSION. In medical jurisprudence. A bruise; an injury to any external part of the body by the impact of a fall or the blow of a blunt instrument, without laceration of the flesh, and either with or without a tearing of the skin, but in the former case it is more properly called a "contused wound." Gasperino v. Prudential Ins. Co. of America, Mo.App., 107 S.W. 819, 827.

CONTUTOR. Lat. In the civil law. A co-tutor, or co-guardian. Inst. 1, 24, 1.

CONUSANCE, In English law. Cognizance or jurisdiction. Conusance of pleas. Termes de la Ley.

CONjJSANCE, CLAIM OF. See Cognizance.

CONUSANT. Cognizant; acquainted with; having actual knowledge; as, if a party knowing of an agreement in which he has an interest makes no objection to it, he is said to be conusant. Co. Litt. 157.

CONUSEE. See Cognizee,

CONUSOR. See Cognizor,

CONVALESCENCE. Gradual recovery of health or physical strength after illness. Romesburg v. Federal Life Ins. Co., 147 Kan. 378, 76 P.2d 829, 831.

CONVENABLE. In old English law. Suitable; agreeable; convenient; fitting. Litt. § 103.

CONVENE. In the civil law. To bring an action.

CONVENIENCE AND NECESSITY. If there is a reasonable need apparent for use of the service, and if a common carrier is not unduly 'interfered with, nor the public highways unduly burdened, a case of "convenience and necessity" exists with respect to an application for a license to operate as a contract motor carrier. Short Way Lines v. Black, 182 S.W.2d 17, 19, 298 Ky. 67.

CONVENIENT. Proper; just; suitable; fit; adapted; proper; becoming appropriate. Finlay v. Dickerson, 29 Ill. 20; Railway Co. v. Smith, 19 S.Ct. 565, 173 U.S. 684, 43 L.Ed. 858; Prina v. Board of Sup'rs of Graham County, 16 Ariz. 252, 143 P. 567, 568.

CONVENIT. Lat. In civil and old English law. It is agreed; it was agreed.

CONVENT. The fraternity of an abbey or prig ory, as *societas* is the number of fellows in a college. A religious house, now regarded as a merely voluntary association, not importing civil death. 33 Law J. Ch. 308.

An association or community of recluses devoted to a religious life under a superior; a body of monks, friars, or nuns, constituting one local community; now usually restricted to a convent of nuns; as, to go into a convent. Sacred Heart Academy of Galveston v. Karsch, 122 S.W.2d 416, 417, 173 Tenn. 618.

CONVENTICLE. A private assembly or meeting for the exercise of religion. The word was first an appellation of reproach to the religious asserm

blies of Wycliffe in the reigns of Edward III, and Richard II., and was afterwards applied to a meeting of dissenters from the established church. As this word in strict propriety denotes an unlawful assembly, it cannot be justly applied to the assembling of persons in places of worship licensed according to the requisitions of law. Wharton.

CONVENTIO. Canon Law. The act of summoning or calling together the parties by summoning the defendant.

The Civil Law. A compact, agreement, or convention. An agreement between two or more persons respecting a legal relation between them. Mackeld. Rom. Law, §§ 385, 386.

The term is one of very wide scope, and applies to all classes of subjects in which an engagement or business relation may be founded by agreement. It is to be distinguished from the negotiations or preliminary transactions on the object of the convention and fixing its extent, which are not binding so long as the convention is not concluded.

In contracts. An agreement; a covenant. Cowell.

CONVENTIO IN UNUM. In the civil law. The agreement between the two parties to a contract upon the sense of the contract proposed. It is an essential part of the contract, following the pollicitation or proposal emanating from the one, and followed by the consension or agreement of the other.

CONVENTIO PRIVATORUM NON POTEST PUBLICO JURI DEROGARE. The agreement of private persons cannot derogate from public right, i. *e.,* cannot prevent the application of general rules of law, or render valid any contravention of law. Co. Litt. 166a; Wing. Max. p. 746, max. 201.

CONVENTIO VINCIT LEGEM. The express agreement of parties overcomes [prevails against] the law. Story, Ag. § 368.

CONVENTION. In English law. An extraordinary assembly of the houses of lords and commons, without the assent or summons of the sovereign. It can only be justified *ex necessitate rei,* as the parliament which restored Charles II., and that which disposed of the crown and kingdom to William and Mary. Wharton. Also the name of an old writ that lay for the breach of a covenant.

In Roman law. An agreement between parties; a pact. A convention was a mutual engagement between two persons, possessing all the subjective requisites of a contract, but which did not give rise to an action, nor receive the sanction of the law, as bearing an "obligation," until thQ objective requisite of a solemn ceremonial, (such as *stipulatio)* was supplied. In other words, convention was the informal agreement of the parties, which formed the basis of a contract, and which became a contract when the external formalities were superimposed. See Maine, Anc. Law, 313.

"The division of conventions into contracts and pacts *was* important in the Roman law. The former were such conventions as already, by the older civil law, founded an obligation and action; all the other conventions were termed 'pacts.' These generally did not produce an actionable obligation. Actionability was subsequently given to several pacts, whereby they received the same power and efficacy that contracts received." Mackeld.Rom.Law, § 395.

In legislation. An assembly of delegates or representatives chosen by the people for special and extraordinary legislative purposes, such as the framing or revision of a state constitution. Also an assembly of delegates chosen by a political party, or by the party organization in a larger or smaller territory, to nominate candidates for an approaching election. In re Opinion of the Justices, 132 Me. 491, 167 A. 176, 179.

In public and international law. A pact or agreement between states or nations in the nature of a treaty; usually applied (a) to agreements or arrangements preliminary to a formal treaty or to serve as its basis, or (b) international agreements for the regulation of matters of common interest but not coming within the sphere of politics or commercial intercourse, such as international postage or the protection of submarine cables. U. S. v. Hunter, C.C.Mo., 21 F. 615..

Constitutional convention. See Constitution..

Judicial convention. See Judicial,

CONVENTIONAL. Depending on, or arising from, the mutual agreement of parties; as distinguished from *legal,* which means created by, or arising from, the act of the law. De Vita Nr& Pianisani, 217 N.Y.S. 438, 440, 127 Misc. 611.

As to conventional "Estates," "Interest," "Mortgage," "Subrogation," and "Trustees," see those titles.

CONVENTIONAL LIEN. A lien is conventional where the lien, general or particular (Cro. Car. 271; 6 Term. 14; 2 Kent 637) is raised by the express agreement and stipulation of the parties, in circumstances where the law alone would not create a lien from the mere relation of the parties or the details of their transaction.

CONVENTIONE. The name of a writ for the breach of any covenant in writing, whether real or personal. Reg.Orig. 115; Fitzh.Nat.Brev. 145.

CONVENTIONS. This name is sometimes given to compacts or treaties with foreign countries as to the apprehension and extradition of fugitive offenders. See Extradition.

CONVENTUAL CHURCH. In ecclesiastical law. That which consists of regular clerks, professing some order or religion; or of dean and chapter; or other societies of spiritual men.

CONVENTUALS. Religious men united in a convent or religious house. Cowell.

CONVENTUS. Lat. A coming together; a con• vention or assembly. *Conventus magnatum vel procerum* (the assembly of chief men or peers) was one of the names of the English parliament. 1 Bl. Comm. 148.

In the civil law. The term meant a gather. ing together of people; a crowd assembled for any purpose; also a convention, pact, or bargain.

CONVENTUS JURIDICUS. In the Roman law. A court of sessions held in the Roman provinces, by the president of the province, assisted by a certain number of counsellors and assessors, at fixed periods, to hear and determine suits, and to provide for the civil administration of the province. Schm. Civil Law, Introd. 17.

CONVERSANT. One who is in the habit of being in a particular place is said to be conversant there. Barnes, 162. Acquainted; familiar.

CONVERSANTES. In old English law. Conversant or dwelling; commorant.

CONVERSATION. Manner of living; habits of life; conduct; as in the phrase "chaste life and conversation." Bradshaw v. People, 153 Ill. 156, 38 N.E. 652. Criminal conversation means seduction of another man's wife, considered as an actionable injury to the husband. Prettyman v. Williamson, 1 Pennewill (Del.) 224, 39 A. 731; Crocker v. Crocker, C.C.Mass., 98 F. 702.

CONVERSE. The transposition of the subject and predicate in a proposition, as: "Everything is good in its place." *Converse,* "Nothing is good which is not in its place." Wharton.

CONVERSION. Equity. The exchange of property from real to personal or from personal to real, which takes place under some circumstances in the consideration of the law, such as, to give effect to directions in a will or settlement, or to stipulations in a contract, although no such change has actually taken place, 1 Bro.C.C. 497; 1 Lead.Cas.Eq. 619; 1 Lead. Cas.Eq. 872; Lawrence v. Elliott, 3 Redf.Sur. (N.Y.) 235; Dodge v. Williams, 46 Wis. 70, 1 N.W. 92, 50 N.W. 1108; Mattison v. Stone, 99 S.C. 151, 82 S.E. 1046, 1047; and by which exchange the property so dealt with becomes invested with the properties and attributes of that into which it is supposed to have been converted; Seymour v. Freer, 8 Wall. 214, 19 L.Ed. 306; Haward v. Peavey, 128 Ill. 430, 21 N.E. 503, 15 Am.St.Rep. 120.

Although it is sometimes necessary for certain purposes of devolution and transfer to regard the property in its changed condition as though the change has not absolutely taken place; Davidson v. Bright, 267 Pa. 580, 110 A. 301, 302.

A qualified conversion is one directed for some particular purpose; Harker v. Reilly, 4 Del.Ch. 72.

Law

An unauthorized assumption and exercise of the right of ownership over goods or personal chattels belonging to another, to the alteration of their condition or the exclusion of the owner's rights. Stickney v. Munroe, 44 Me. 197; Baldwin v. Cole, 6 Mod. 212; In re Di Crocco's Estate, 12 N.Y.S.2d 276, 278, 170 Misc. 826; Powell v. A. K. Brown Motor Co., 20 S.E.2d 636, 637, 200 S.C. 75. Any unauthorized act which deprives an owner of his property permanently or for an indefinite time. Forbush v. San Diego Fruit & 'Produce Co., 46 Idaho, 231, 266 P. 659, 663.

Also one who aids and abets another in keeping property from its rightful owner is guilty of "conversion". Edwards v. Max Thieme Chevrolet Co., La.App., 191 So. 569, 571, 572.

Constructive conversion. An implied or virtual conversion, which takes place where a person does such acts in reference to the goods of another as amount in law to the appropriation of the property to himself. Scruggs v. Scruggs, C.C. Mo., 105 F. 28; Laverty v. Snethen, 68 N.Y. 524, 23 Am.Rep. 184; Wade v. Ray, 67 Okl. 39, 168 P. 447, 449, L.R.A.1918B, 796.

Direct conversion. The act of actually appropriating the property of another to his own beneficial use and enjoyment, or to that of a third person, or destroying it, or altering its nature. Ross v. Lewis, 23 N.M. 524, 169 P. 468, 469; or wrongfully assuming title in himself; Cass v. Ocean Park Bath Co., 45 Cal.App. 656, 188 P. 616, 617; there must be a positive wrong or act of malfeasance; American Surety Co. of New York v. Hill County, Tex.Civ.App., 254 S.W. 241, 245.

CONVEY. To pass or transmit the title to property from one to another; to transfer property or the title to property by deed or instrument under seal. Used popularly in sense of "assign," "sale," or "transfer." Crookshanks v. Ransbarger, 80 W.Va. 21, 92 S.E. 78, 82; McQuiddy Printing Co. v. Hirsig, 23 Tenn.App. 434, 134 S.W.2d 197, 205.

Convey relates properly to the disposition of real property, not to personal. Dickerman v. Abrahams, 21 Barb., N.Y., 551, 561. To convey real estate is, by an appropriate instrument, to transfer the legal title to it from the present owner to another. Abendroth v. Greenwich, 29 Conn. 356.

CONVEYANCE. In pleading. Introduction or inducement.

In real property law. In the strict legal sense, a transfer of legal title to land. In the popular sense, and as generally used by lawyers, it denotes any transfer of title, legal or equitable. Chupco v. Chapman, 76 Okl. 201, 170 P. 259, 266. The transfer of the title of land from one person or class of persons to another. Klein v. McNamara, 54 Miss. 105; Alexander v. State, 28 Tex. App. 186, 12 S.W. 595; In re Loes' Will, 55 N.Y.S. 2d 723, 726. An instrument in writing under seal, (anciently termed an "assurance,") by which some estate or interest in lands is transferred from one person to another; such as a deed, mortgage, etc. 2 Bl. Comm. 293, 295, 309.

Conveyance includes every instrument in writing *by* which any estate or interest in real estate is created, aliened, mortgaged, or assigned, or by which the title to any real estate may be affected in law or equity, except last wills and testaments, leases for a term not exceeding three years, and executory contracts for the sale or purchase of lands. Stearns Lighting & Power Co. v. Central Trust Co., C.C.A.Mich., 223 F. 962, 966; Shraiberg *v.* Hanson, 138 Minn. 80, 163 N.W. 1032, 1033.

General

Absolute or conditional conveyance. An absolute conveyance is one by which the right or property in a thing is transferred, free of any condition or qualification, by which it might be defeated

or changed; as an ordinary deed of lands, in contradistinction to a mortgage, which is a conditional conveyance. Burrill; Falconer v. Buffalo, etc., R. Co., 69 N.Y. 491; Brown v. United States, C.C.A.Pa., 95 Fed.2d 487, 489.

Fraudulent conveyance. See Fraudulent.

Mesne conveyance. An intermediate conveyance; one occupying an intermediate position in a chain of title between the first grantee and the present holder.

Primary conveyances. Those by means whereof the benefit or estate is created or first arises; as distinguished from those whereby it may be enlarged, restrained, transferred, or extinguished. The term includes feoffment, gift, grant, lease, exchange, and partition, and is opposed to *derivative* conveyances, such as release, surrender, confirmation, etc. 2 Bl. Comm. 309.

Secondary conveyances. The name given to that class of conveyances which presuppose some other conveyance precedent, and only serve to enlarge, confirm, alter, restrain, restore, or transfer the interest granted by such original conveyance. 2 Bl. Comm. 324. Otherwise termed "derivative conveyances" *(q. v.).*

Voluntary conveyance. A conveyance without valuable consideration; such as a deed or settlement in favor of a wife or children. Gentry v. Field, 143 Mo. 399, 45 S.W. 286; Shannon v. Duffield, 218 Ky. 770, 292 S.W. 322, 323; English v. Brown, D.C.N.J., 219 F. 248, 256.

CONVEYANCER. One whose business it *is* to draw deeds, bonds, mortgages, wills, writs, or other legal papers, or to examine titles to real estate. 14 St. at Large, 118.

He who draws conveyances; especially a barrister who confines himself to drawing conveyances, and other chamber practice. Mozley & Whitley.

CONVEYANCING. A term including both the science and art of transferring titles to real estate from one man to another.

Conveyancing is that part of the lawyer's business which relates to the alienation and transmission of property and other rights from one person to another, and to the framing of legal documents intended to create, define, transfer, or extinguish rights. It therefore includes the investigation of the title to land, and the preparation of agreements, wills, articles of association, private statutes operating as conveyances, and many other instruments in addition to conveyances properly so called. Sweet; Livermore v. Bagley, 3 Mass. 505.

CONVEYANCING COUNSEL TO THE COURT OF CHANCERY. Certain counsel, not fewer than six in number, appointed by the lord chancellor, for the purpose of assisting the court of chancery, or any judge thereof, with their opinion in matters of title and conveyancing. Mozley & Whitley.

CONVICIA SI IRASCARIS TUA DIVULGAS; SPRETA EXOLESCUNT. 3 Inst. 198. If you be moved to anger by insults, -you publish them; if despised, they are forgotten.

CONVICIUM. In the civil law. The name of a species of slander or injury uttered in public, and which charged some one with some act *contra bonos mores.*

CONVICT, *v.* To condemn after judicial investigation; to find a man guilty of a criminal charge. The word was formerly used also in the sense of finding against the defendant in a civil case.

Formerly a man was said to be convict when he had been found guilty of treason or felony, but before judgment had been passed on him, after which he was said to be attaint, *(q. v.).* Co.Litt. 390b.

CONVICT, n. One who has been finally condemned by a court. One who has been adjudged guilty of a crime or misdemeanor. Usually spoken of condemned felons or the prisoners in penitentiaries. Molineux v. Collins, 177 N.Y. 395, 69 N.E. 727, 65 L.R.A. 104.

CONVICTED. Means that a judgment of final condemnation has been pronounced against the accused. Gallagher v. State, 10 Tex.App. 469; Neibling v. Terry, 177 S.W.2d 502, 504, 352 Mo. 396, 152 A.L.R. 249.

CONVICTION. In a general sense, the result of a criminal trial which ends in a judgment or sentence that the prisoner is guilty as charged.

The act of convicting a person, or state of being convicted, of a criminal offense. Hershey v. People, 91 Colo. 113, 12 P.2d 345, 347. Finding a person guilty by verdict of a jury. 1 Bish.Crim.Law, § 223; Emmertson v. State Tax Commission of Utah, 93 Utah 219, 72 P.2d 467, 470, 113 A.L.R. 1174.

A record of the summary proceedings upon any penal statute before one or more justices of the peace or other persons duly authorized, in a case where the offender has been *convicted* and sentenced. Holthouse. In respect of pardoning power, verdict of guilty. State v. Garrett, 135 Tenn. 617, 188 S.W. 58, L.R.A.1917B, 567. *Contra,* Ex parte White, 28 Okl.Cr, 180, 230 P. 522.

In ordinary phrase, the meaning of the word "conviction" is the finding by the jury of a verdict that the accused is guilty. But, in legal parlance, it often denotes the final judgment of the court. Blaufus v. People, 69 N.Y. 109, 25 Am.Rep. 148; Marino v. Hibbard, 243 Mass. 90, 137 N.E. 369; Commonwealth v. Minnich, 250 Pa. 363, 95 A. 565, 567, L.R.A.1916B, 950.

The ordinary legal meaning of "conviction," when used to designate a particular stage of a criminal prosecution triable by a jury, is the confession of the accused in open court or the verdict returned against him by the jury, which ascertains and publishes the fact of his guilt; while "judgment" or "sentence" is the appropriate word to denote the action of the court before which the trial is had, declaring the consequences to the convict of the fact thus ascertained. A pardon granted after verdict of guilty, but before sentence, and pending a hearing upon exceptions taken by the accused during the trial, is granted after conviction, within the meaning of a constitutional restriction upon granting pardon before conviction. When, indeed, the word "conviction" is used to describe the effect of the guilt of the accused as judicially proved in one case, when pleaded or given in evidence in another, it is sometimes used in a more comprehensive sense, including the judgment of the court upon the verdict or confession of guilt; as, for instance, in speaking of the plea of *autrefois convict,* or of the effect of guilt, judicially ascertained, as a disqualification of the convict. Com. v. Lockwood, 109 Mass. 323, 12 Am.Rep. 699; In re Anderson, 34 Cal.App.2d 48, 92 P.2d 1020, 1022. Attorney General ex rel. O'Hara v. Montgomery, 275 Mich. 504, 267 N.W. 550, 554.

Former Conviction. A previous trial and conviction of the same offense as that now charged; pleadable in bar of the prosecution. State v. Ellsworth, 131 N.C: 773, 42 S.E. 699, 92 Am.St.Rep. 790; Williams v. State, 13 Te[g].App. 285, 46 Am. Rep. 237.

Summary Conviction. The conviction of a person, (usually for a minor misdemeanor,) as the result of his trial before a magistrate or court,- without the intervention of a jury, which is authorized by statute in England and in many of the states. In these proceedings there is no intervention of a jury, but the party accused is acquitted or condemned by the suffrage of such person only as the statute has appointed to be his judge. A conviction reached on such a magistrate's trial is called a "summary conviction." Brown; Blair v. Com., 25 Grat. (Va.) 853.

CONVINCING PROOF. Such as is sufficient to establish the proposition in question, beyond hesitation, ambiguity, or reasonable doubt, in an unprejudiced mind. Evans v. Rugee, 57 Wis. 623, 16 N.W. 49; French v. Day, 89 Me. 441, 36 A. 909. See Clear.

CONVIVIUM. A tenure by which a tenant was bound to provide meat and drink for his lord at least once in the year. Cowell.

CONVOCATION. In ecclesiastical law. The general assembly of the clergy to consult upon ecclesiastical matters.

CONVOY. A naval force, under the command of an officer appointed by government, for the protection of merchant-ships and others, during the whole voyage, or such part of it as is known to require such protection. Marsh. Ins. b. 1, c. 9, § 5; Park, Ins. 388; Peake, Add. Cas. 143n; 2 H. Bl. 551.

CO-OBLIGOR. A joint obligor; one bound jointly with another or others in a bond or obligation.

COOL BLOOD. In the law of homicide. Calmness or tranquillity; the undisturbed possession of one's faculties and reason; the absence of violent passion, fury, or uncontrollable excitement.

COOLING TIME. Time to recover "cool blood" after severe excitement or provocation; time for the mind to become so calm and sedate as that it is supposed to contemplate, comprehend, and coolly act with reference to the consequences likely to ensue. May v. People, 8 Colo. 210, 6 P. 816; Keiser v. Smith, 71 Ala. 481, 46 Am.Rep. 342.

CO-OPERATE. To act jointly or concurrently toward a common end. Darnell v. Equity Life Ins. Co.'s Receivers, 179 Ky. 465, 200 S.W. 967, 970.

CO-OPERATION. In economics. The combined action of numbers. It is of two distinct kinds: (1) Such co-operation as takes place when several persons help each other in the same employment; (2) such co-operation as takes place when several persons help each other in different employments. These may be termed "simple co-operation" and "complex co-operation." Mill, Pol. Ec. 142.

In patent law. Unity of action to a common end or a common result, not merely joint or simultaneous action. Boynton Co. v. Morris Chute Co., C.C.N.J., 82 F. 444; Fastener Co. v. Webb, C. C.Ohio, 89 F. 987; Holmes Burglar Alarm Tel. Co. v. Domestic, etc., Tel. Co., C.C.N.J., 42 F. 227.

CO-OPERATIVE ASSOCIATION. A union of individuals commonly laborers, farmers, or small capitalists, formed for the prosecution in common of some productive enterprise, the profits being shared in accordance with the capital or labor contributed by each. Mooney v. Farmers' Mercantile & Elevator Co. of Madison, 138 Minn. 199, 164 N.W. 804, 805.

CO-OPERATIVE NEGLIGENCE. Contributory negligence. Otte v. Miller, 24 S.E.2d 90, 93, 125 W.Va. 317.

COOPERTIO. In old English law. The head or branches of a tree cut down; though *coopertio arborum* is rather the bark of timber trees felled, and the chumps and broken wood. Cowell.

COOPERTUM. In forest law. A covert; a thicket *(dumetum)* or shelter for wild beasts in a forest. Spelman.

COOPERTURA. In forest law. A thicket, or covert of wood.

COOPERTUS. Covert; covered.

CO-OPTATION. A concurring choice; the election, by the members of a close corporation, of a person to fill a vacancy.

CO-ORDINATE. Equal, of the same order, rank, degree or importance; not subordinate. Empire Ins. Co. of Texas v. Cooper, Tex.Civ.App., 138 S. W.2d 159, 164. Adjusted to, in harmony with. ZEolian-Skinner Organ Co. v. Shepard Broadcasting Service, C.C.A.Mass., 81 F.2d 392, 395. As to courts of "co-ordinate jurisdiction," see Jurisdiction.

*Co-ordinate* and *Subordinate are* terms often applied as a test to ascertain the doubtful meaning of clauses in an act of parliament. If there be two, one of which is grammatically governed by the other, it is said to be "subordinate" to it; but, if both are equally governed by some third clause, the two are called "co-ordinate." Wharton.

CO-ORDINATE JURISDICTION. That which is possessed by courts of equal rank, degree, or authority, equally competent to deal with the matter in question, whether belonging to the same or different systems; concurrent jurisdiction.

COPAUCENARY. A species of estate, or tenancy, which exists where lands of inheritance descend from the ancestor to two or more persons. It arises in England either by common law or particular custom. By common law, as where a person, seised in fee-simple or fee-tail, dies, and his next heirs are two or more females, his daughters, sisters, aunts, cousins, or their representa-

tives; in this case they all inherit, and these coheirs, are then called "coparceners," or, for brevity, "parceners" only. Litt. §§ 241, 242; 2 Bl. Comm. 187. By particular custom, as where lands descend, as in gavelkind, to all the males in equal degree, as sons, brothers, uncles, etc. Litt. § 265; 1 Steph. Comm. 319. An estate which several persons hold as one heir, whether male or female. This estate has the three unities of time, title, and possession; but the interests of the coparceners may be unequal. 1 Washb. Real Prop. 414; 2 Bl. Comm. 188; 4 Kent 366; Flynn v. Herye, 4 Mo.App. 360.

While joint tenancies refer to persons, the idea of coparcenary refers to the estate. The title to it is always by descent. The respective shares may be unequal; as, for instance, one daughter and two granddaughters, children of a deceased daughter, may take by the same act of descent. As to strangers, the tenants' seisin is a joint one, but, as between themselves, each is seised of his or her own share, on whose death it goes to the heirs, and not by survivorship. The right of possession of coparceners Ts in common, and the possession of one is, in general, the possession of the others. 1 Washb.Real Prop. *414.

COPARCENERS. Persons to whom an estate of inheritance descends jointly, and by whom it is held as an entire estate. 2 Bl. Comm. 187.

COPARTICEPS, In old English law. A coparcener.

COPARTNER. One who is a partner with one or more other persons; a member of a partnership.

COPARTNERSHIP. A partnership.

COPARTNERY. In Scotch law. The contract of copartnership. A contract by which the several partners agree concerning the communication of loss or gain, arising from the subject of the contract. Bell.

COPE. A custom or tribute due to the crown or lord of the soil, out of the lead mines in Derbyshire; also a hill, or the roof and covering of a house; a church vestment.

COPEMAN, or COPESMAN. A chapman, *(q. v.).*

COPESMATE. A merchant; a partner in merchandise.

COPIA. Lat. In civil and old English law. Opportunity or means of access.

In old English law. A copy. Copia *libelli,* the copy of a libel. Reg. Orig. 58.

COPIA LIBELLI DELIBERANDA. The name of a writ that lay where a man could not get a copy of a libel at the hands of a spiritual judge, to have the same delivered to him. Reg. Orig. 51.

COPIA VERA. In Scotch practice. A true copy. Words written at the top of copies of instruments.

COPPA. In English law. A crop or cock of grass, hay, or corn, divided into titheable portions, that it may be more fairly and justly tithed.

COPPER AND SCALES. See Mancipatio.

COPPER MATTE. A product of smelting copper ore in a furnace consisting almost entirely of a mixture of iron sulphide and copper sulphide. It requires further treatment to break up and remove iron sulphide, and then convert remaining copper sulphide which is called white metal to metallic copper. United Verde Copper Co. v. Peirce-Smith Converter Co., C.C.A.Del., 7 F.2d 13. Also known as "regulus of copper." U. S. v. Consolidated Kansas City Smelting & Refining Co,. 8 Ct.Cust.App. 226, 227.

COPPICE, or COPSE. A small wood consisting of underwood, which may be cut at twelve or fifteen years' growth for fuel.

COPROLALIA. In medical jurisprudence. A disposition or habit of using obscene language, developing unexpectedly in the particular individual or contrary to his previous history and habits, recognized as a sign of insanity or of aphasia.

COPULA. The corporal consummation of marriage. *Copula,* (in logic,) the link between subject and predicate contained in the verb.

COPULATIO VERBORUM INDICAT ACCEPTATIONEM IN EODEM SENSU. Coupling of words together shows that they are to be understood in the same sense. 4 Bacon's. Works, p. 26; Broom, Max. 588.

COPULATIVE TERM. One which is placed between two or more others to join them together.

COPY. The transcript or double of an original writing; as the copy of a patent, charter, deed, etc. Nations v. Lowenstern, 27 N.M. 613, 204 P. 60, 62; State Text-Book Commission v. Weathers, 184 Ky. 748, 213 S.W. 207, 210; In re Janes' Estate, 18 Ca1.2d 512, 116 P.2d 438, 441.

*Carbon copies.* Carbon copies made at the same time and with the same device as the original are not "copies" but duplicate originals. Martin & Lanier Paint Co. v. Daniels, 27 Ga.App. 302, 108 S.E. 246, 247; Liberty Nat. Bank and Trust Co. v. Louisville Trust Co., 295 Ky. 825, 175 S.W.2d 524, 528.

*Exemplifications* are copies verified by the great seal or by the seal of a court. West Jersey Traction Co. v. Board of Public Works, 57 N.J.Law, 313, 30 A. 581.

*Examined copies* are those which have been compared with the original or with an official record thereof.

*Office copies* are those made by officers intrusted with the originals and authorized for that purpose. Id., Stamper v. Gay, 3 Wyo. 322, 23 P. 69. See, also, Office.

In the law of copyrights. A reproduction or duplication of a thing, or that which comes so near to the original as to give to every person seeing it the idea created by the original. McConnor v. Kaufman, D.C.N.Y., 49 F.Supp. 738, 744.

COPYHOLD. A species of estate at will, or customary estate in England, the only visible title

to which consists of the copies of the court rolls, which are made out by the steward of the manor, on a tenant's being admitted to any parcel of land, or tenement belonging to the manor. It is an estate at the will of the lord, yet such a will as is agreeable to the custom of the manor, which customs are preserved and evidenced by the rolls of the several courts baron, in which they are entered. 2 Bl.Comm. 95. In a larger sense, copyhold is said to ifnport every customary tenure, (that is, every tenure pending on the particular custom of a manor,) as opposed to free socage, or freehold, which may now (since the abolition of knight-service) be considered as the general or common-law tenure of the country. 1 Steph. Comm. 210.

Copyhold commissioners. Commissioners appointed to carry into effect various acts of parliament, having for their principal objects the compulsory commutation of manorial burdens and restrictions, (fines, heriots, rights to timber and minerals, etc.,) and the compulsory enfranchise. ment of copyhold lands. 1 Steph. Comm. 643; Elton, Copyh.

Copyholder. A tenant by copyhold tenure, (by copy of court-roll.) 2 Bl. Comm. 95.

Privileged copyholds. Those copyhold estates which are said to be held according to the custom of the manor, and not *at the will of the lord,* as common copyholds are. They include customary freeholds and ancient demesnes. i Crabb, Real Prop. p. 709, § 919.

COPYRIGHT. The right of literary property as recognized and sanctioned by positive law. An intangible, incorporeal right granted by statute to the author or originator of certain literary or artistic productions, whereby he is invested, for a limited period, with the sole and exclusive privilege of multiplying copies of the same and publishing and selling them. In re Rider, 16 R.I. 271, 15 A. 72; Mott Iron Works v. Clow, C.C.A.Ill., 82 F. 316, 27 C.C.A. 250; Palmer v. De Witt, 47 N.Y. 536, 7 Am.Rep. 480; Stuff v. La Budde Feed & Grain Co., D.C.Wis., 42 F.Supp. 493, 497; Schill v. Remington Putnam Book Co., 179 Md. 83, 17 A.2d 175.

International copyright is the right of a subject of one country to protection against the republication in another country of a work which he originally published in his own country. Sweet.

CORAAGIUM, or CORAAGE. Measures of corn. An unusual and extraordinary tribute, arising only on special occasions. They are thus distinguished from services. Mentioned in connection with *hidage* and *carvage.* Cowell.

CORAM. Lat. Before; in presence of. Applied to persons only. Townsh. Pl. 22.

CORAM DOMINO REGE. Before our lord the king. *Coram domino rege ubicumque tune fuerit Anglice,* before our lord the king wherever he shall then be in England.

CORAM IPSO REGE. Before the king himself. The old name of the court of king's bench, which was originally held before the king in person. 3 Bl.Comm. 41.

CORAM NOBIS. Before us ourselves, (the king, i. *e.,* in the king's or queen's bench.) Applied to writs of error directed to another branch of the same court, *e. g.,* from the full bench to the court at *nisi prius.* 1 Archb. Pr. K. B. 234. See Writ of Error.

CORAM NON JUDICE. In presence of a person not a judge. When a suit is brought and determined in a court which has no jurisdiction in the matter, then it is said to be *coram non judice,* and the judgment is void. Manufacturing Co. v. Holt, 51 W.Va. 352, 41 S.E. 351.

CORAM PARIBUS. Before the peers or freeholders. The attestation of deeds, like all other solemn transactions, was originally done only *coram paribus.* 2 Bl.Comm. 307. *Coram paribus de vicineto,* before the peers or freeholders of the neighborhood. Id. 315.

CORAM SECTATORIBUS. Before the suitors. Cro. Jac. 582.

CORAM VOBIS. Before you. A writ of error directed by a court of review to the court which tried the cause, to correct an error in fact. 3 Md. 325; 3 Steph.Comm. 642. See Writ of Error.

CORD. A measure of wood containing 128 cubic feet, otherwise expressed as a pile of wood 8 feet long, 4 feet high, and 4 feet wide. Sacks v. State, 83 Tex.Cr.R. 560, 204 S.W. 430.

CO-RESPONDENT. A person summoned to answer a bill, petition, or libel, together with another respondent. Now chiefly used to designate the person charged with adultery with the respondent in a suit for divorce for that cause, and joined as a defendant with such party. Lowe v. Bennett, 27 Misc. 356, 58 N.Y.S. 88. Mortensen v. Los Angeles Examiner, 112 Cal.App. 194, 296 P. 927, 930.

CORIUM FORISFACERE. To forfeit one's skin, applied to a person condemned to be whipped; anciently the punishment of a servant. *Corium perdere,* the same. *Corium redimere,* to compound for a whipping. Wharton.

CORN. In English law, a general term for any sort of grain; but in America it is properly applied only to maize. Sullins v. State, 53 Ala. 476; Kerrick v. Van Dusen, 32 Minn. 317, 20 N.W. 228; Corn. v. Pine, 3 Pa.Law J. 412.

In the memorandum clause in policies of insurance it includes pease and beans, but not rice. Park, Ins. 112; Scott v. Bourdillion, 2 Bos. & P., N. It., 213.

CORN LAWS. A species of protective tariff formerly in existence in England, imposing import-duties on various kinds of grain. The corn laws were abolished in 1846.

CORN MEAL. An unmixed meal made from entire grains of corn. Miller Grain & Commission Co. v. International Sugar Feed No. 2 Co., 197 Ala. 100, 72 So. 368.

CORN RENT. A rent in wheat or malt paid on college leases by direction of St. 18 Eliz. c. 6. 2 Bl.Comm. 609.

CORN WHISKY. An intoxicating whisky or liquor made from corn or containing a corn product, otherwise known as "moonshine," "white mule," "hootch," "corn liquor," "moonshine corn whisky." State v. Bilyeu, Mo.Sup., 295 S.W. 104, 105; State v. Pinto, 312 Mo. 99, 279 S.W. 144, 148; Mullins v. Commonwealth, 115 Va. 945, 79 S.E. 324, 327.

CORNAGE. A species of tenure in England, by which the tenant was bound to blow a horn for the sake of alarming the country on the approach of an enemy. It was a species of grand serjeanty. Bac. Abr. "Tenure," N.

CORNER. A combination among the dealers in a specific commodity, or outside capitalists, for the purpose of buying up the greater portion of that commodity which is upon the market or may be brought to market, and holding the same back from sale, until the demand shall so far outrun the limited supply as to advance the price abnormally. Kirkpatrick v. Bonsall, 72 Pa. 158; Wright v. Cudahy, 168 Ill. 86, 48 N.E. 39; United States v. Patten, C.C.N.Y., 187 F. 664, 668.

A "corner" is a condition arising when a much greater quantity of any given commodity is sold for future delivery within a given period than can be purchased in the market. The buyers, who are called in the slang of the exchanges, the "longs," then insist on delivery, and thus succeed in running up the prices to a fictitious point, at which the deals are "rung out" between the dealers oy the payment of differences, or, where the buyers insist, by actual delivery. Kent v. Miltenberger, 13 Mo.App. 503, 506.

Surveying. An angle made by two boundary lines; the common end of two boundary lines, which run at an angle with each other.

Lost corner. One whose location as established .by the government surveyors cannot be found. The mere fact that evidence of the physical location cannot now be seen, or that no one who saw the marked corner is produced, does not necessarily make the corner a lost one. Goroski v. Tawney, 121 Minn. 189, 141 N.W. 102, 103; Cooper v. Quade, 191 Iowa, 461, 182 N.W. 798, 799; Fehrman v. Bissell Lumber Co., 188 Wis. 82, 204 N.W. 582.

*Obliterated corner.* One where no visible evidence remains of the work of the original surveyor in establishing it. Fellows v. Willett, 98 Okl. 248, 224 P. 298, 300; Fehrman v. Bissell Lumber Co., 188 Wis. 82, 204 N.W. 582.

CORNET. A commissioned officer of cavalry, abolished in England in 1871, and not existing in the United States army.

CORODIO HABENDO. The name of a writ to exact a corody of an abbey or religious house.

CORODIUM. In old English law. A corody.

CORODY. In old English law. A sum of money or allowance of meat, drink, and clothing due to the crown from the abbey or other religious house, whereof it was founder, towards the sustentation of such one of its servants as is thought fit to receive it. It differs from a pension, in that it was allowed towards the maintenance of any of the king's servants in an abbey; a pension being given to one of the king's chaplains, for his better maintenance, till he may be, provided with a benefice. Fitzh. Nat. Brev. 250. See 1 Bl.Comm. 283.

COROLLARY. In logic. A collateral or secondary consequence, deduction, or inference.

CORONA. The crown. *Placita coronce;* pleas of the crown; criminal actions or proceedings, in which the crown was the prosecutor.

CORONA MALA. In old English law. The clergy who abuse their character were so called. Blount.

CORONARE. In old records. To give the tonsure, which was done on the crown, or in the form of a crown; to make a man a priest. Cowell.

CORONARE FILIUM. To make one's son a priest. *Homo coronatus* was one who had received the first tonsure, as preparatory to superior orders, and the tonsure was in form of a corona, or crown of thorns. Cowell.

CORONATION. It "is but a royal ornament and solemnization of the royal descent, but no part of the title." By the laws of England there can be no interregnum; 7 Co.Rep. 10b.

CORONATION OATH. The oath administered to a sovereign at the ceremony of crowning or investing him with the insignia of royalty, in acknowledgment of his right to govern the kingdom, in which he swears to observe the laws, customs, and privileges of the kingdom, and to act and do all things conformably thereto. Wharton.

CORONATOR. A coroner, *(q.* v.) Spelman.

CORONATORE ELIGENDO. The name of a writ issued to the sheriff, commanding him to proceed to the election of a coroner.

CORONATORE EXONERANDO. In English law. The name of a writ for the removal of a coroner, for a cause which is to be therein assigned, as that he is engaged in other business, or incapacitated by years or sickness, or has not a sufficient estate in the county, or lives in an inconvenient part of it.

CORONER. The name of an ancient officer of the common law, whose office and functions are continued in modern English and American administration. The coroner is an officer belonging to each county, and is charged with duties both judicial and ministerial, but chiefly the former. It is his special province and duty to make inquiry into the causes and circumstances of any death happening within his territory which occurs through violence or suddenly and with marks of

suspicion. This examination (called the "coroner's inquest") is held with a jury of proper persons upon view of the dead body. See Bract. fol. 121; 1 Bl.Comm. 346-348; 3 Steph.Comm. 33. In England, another branch of his judicial office is to inquire concerning shipwrecks, and certify whether wreck or not, and who is in possession of the goods; and also to inquire concerning treasure trove, who were the finders, and where it is, and whether any one be suspected of having found and concealed a treasure. 1 Bl.Comm. 349. It belongs to the ministerial office of the coroner to serve writs and other process, and generally to discharge the duties of the sheriff, in case of the incapacity of that officer or a vacancy in his office. On the office and functions of coroners, see, further, Cox v. Royal Tribe, 42 Or. 365, 71 Pac. 73, 60 L.R.A. 620; Lancaster County v. Holyoke, 37 Neb. 328, 55 N.W. 950, 21 L.R.A. 394.

CORONER'S COURT. In England. A tribunal of record, where a coroner holds his inquiries. Cox v. Royal Tribe, 42 Or. 365, 71 P. 73, 60 L.R.A. 620.

CORONER'S INQUEST. An inquisition or examination into the causes and circumstances of any death happening by violence or under suspicious conditions within his territory, held by the coroner with the assistance of a jury. Boisliniere v. County Com'rs, 32 Mo. 378; Ehlers v. Blood, 175 Misc. 72, 22 N.Y.S.2d 1001, 1005.

CORPORAL. Relating to the body; bodily. Should be distinguished from corporeal *(q. v.)*

CORPORAL IMBECILITY. Physical inability to perform completely the act of sexual intercourse; not necessarily congenital, and not invariably a permanent and incurable impotence. Griffeth v. Griffeth, 162 Ill. 368, 44 N.E. 820.

CORPORAL OATH. An oath, the external solemnity of which consists in laying one's hand upon the Gospels while the oath is administered to him. More generally, a solemn oath. Jackson v. State, 1 Ind. 185; State v. Norris, 9 N.H. 102; Com. v. Jarboe, 89 Ky. 143, 12 S.W. 138.

The terms "corporal oath" and "solemn oath" are, in Indiana, at least, used synonymously; and an oath taken with the uplifted hand may be properly 'described by either term.

CORPORAL PUNISHMENT. Physical punishment as distinguished from pecuniary punishment or a fine; any kind of punishment of or inflicted on the body, such as whipping or the pillory; the term may or may not include imprisonment, according to the context. Ritchey v. People, 22 Colo. 251, 43 P. 1026; Fowler v. American Mail Line, C. C.A.Cal., 69 F.2d 905, 907.

The use of rubber hose or other weapon to suppress a threatened riot or to prevent prisoner from doing bodily harm to an officer or another inmate is not corporal punishment. O'Brien v. Olson, 42 Cal.App.2d 449, 109 P.2d 8, 16.

CORPORAL TOUCH. Bodily touch; actual physical contact; manual apprehension.

CORPORALE SACRAMENTUM. In old English law. A corporal oath.

CORPORALIS INJURIA NON RECIPIT ?ESTIMATIONEM DE FUTURO. A personal injury does not receive satisfaction from a future course of proceeding, [is not left for its satisfaction to *a* future course of proceeding.] Bac. Max. reg. 6; Broom, Max. 278.

CORPORATE. Belonging to a corporation; as *a* corporate name. Incorporated; as *a* corporate body.

CORPORATE ACT OR MINISTERIAL ACT OF MUNICIPAL CORPORATION. For which it can be held liable is act which is done by virtue of powers exercised for municipality's own advantage or in negligent performance of duty specifically imposed by statute. Broome v. City of Charlotte, 208 N.C. 729, 182 S.E. 325, 326.

CORPORATE ALTER EGO, DOCTRINE OF. Means that courts ignoring forms and looking to substance will regard stockholders as owners of corporation's property, or as the real parties in interest whenever it is necessary to do so to prevent fraud which might otherwise be perpetrated, to redress a wrong which might otherwise go without redress, or to do justice which might otherwise fail. Geary v. Cain, 79 Utah 268, 9 P. 2d 396, 398.

CORPORATE AUTHORITIES. The title given in statutes of several states to the aggregate body of officers of a municipal corporation, or to certain of those officers (excluding the others) who are vested with authority in regard to the particular matter spoken of in the statute, as, taxation, bonded debt, regulation of the sale of liquors, etc. See People v. Knopf, 171 Ill. 191, 49 N.E. 424; State v. Andrews, 11 Neb. 523, 10 N.W. 410; White v. Papillion Drainage Dist., 96 Neb. 241, 147 N.W. 218, 219; Schaeffer v. Bonham, 95 Ill. 382.

CORPORATE BODY. This term, or its equivalent "body corporate," is applied to private corporations aggregate; not including municipal corporations. Cedar County v. Johnson, 50 Mo. 225; East Oakland Tp. v. Skinner, 94 U.S. 256, 24 L.Ed. 125; County Board of Education for Houston County v. Hunt, 29 Ga.App. 665, 116 S.E. 900.

CORPORATE BONDS. A written promise by a corporation under seal to pay a fixed sum of money at some future time named, with stated interest payable at some fixed time or intervals, given in return for money or its equivalent received by the corporation, sometimes secured, and sometimes not. Hammond Lumber Co. v. Adams, 7 Ca1.2d 24, 59 P.2d 1030, 1031.

CORPORATE FRANCHISE. The right to exist and do business as a corporation; the right or privilege granted by the state or government to the persons forming an aggregate private corporation, and their successors, to exist and do business as a corporation and to exercise the rights and powers incidental to that form of organiza-

tion or necessarily implied in the grant. Bank of California v. San Francisco, 142 Cal. 276, 75 Pac. 832, 64 L.R.A. 918; State on inf. Wear v. Business Men's Athletic Club, 178 Mo.App. 548, 163 S.W. 901, 907.

CORPORATE LEGAL INDIVIDUAL. Municipal corporation possesses two kinds of power, governmental and public, and proprietary and private, and in exercise of former, corporation is a "municipal government," while as to latter, it is a "corporate legal individual." Herkimer County v. Village of Herkimer, 251 App.Div. 126, 295 N.Y.S. 629, 633.

CORPORATE NAME. When a corporation is erected, a name is always given to it, or, supposing none to be actually given, will attach to it by implication, and by that name alone it must sue and be sued, and do all legal acts, though a very minute variation therein is not material, and the name is capable of being changed (by competent authority) without affecting the identity or capacity of the corporation. Wharton.

CORPORATE PURPOSE. In reference to municipal corporations, and especially to their powers of taxation, a "corporate purpose" is one which shall promote the general prosperity and the welfare of the municipality. Dickinson v. Salt Lake City, 57 Utah 530, 195 P. 1110, 1111; City of Quitman v. Jelks & McLeod, 139 Ga. 238, 77 S.E. 76; People ex rel. Moshier v. City of Springfield, 370 Ill. 541, 19 N.E.2d 598, 602; or a purpose necessary or proper to carry into effect the object of the creation of the corporate body, People v. School Trustees, 78 Ill. 140; or one which is germane to the general scope of the objects for which the corporation was created or has a legitimate connection with those objects and a manifest relation thereto. Weightman v. Clark, 103 U.S. 256, 26 L. Ed. 392; Denman v. City of Tacoma, 170 Wash. 406, 16 P.2d 596, 597.

CORPORATION. An artificial person or legal entity created by or under the authority of the laws of a state or nation, composed, in some rare instances, of a single person and his successors, being the incumbents of a particular office, but ordinarily consisting of an association of numerous individuals, who subsist as a body politic under a special denomination, which is regarded in law as having a personality and existence distinct from that of its several members, and which is, by the same authority, vested with the capacity of continuous succession, irrespective of changes in its membership, either in perpetuity or for a limited term of years, and of acting as a unit or single individual in matters relating to the common purpose of the association, within the scope of the powers and authorities conferred upon such bodies by law. Dartmouth College v. Woodward, 4 Wheat. 518, 636, 657, 4 L.Ed. 629; U. S. v. Trinidad Coal Co., 137 U.S. 160, 11 S.Ct. 57, 34 L.Ed. 640; Andrews Bros. Co. v. Youngstown Coke Co., 86 F. 585, 30 C.C.A. 293; Porter v. Railroad Co., 76 Ill. 573; Nebraska Wheat Growers' Ass'n v. Smith, 115 Neb. 177, 212 N.W. 39, 44; State v. Thistle Down Jockey Club, 114 Ohio St. 582, 151 N.E. 709, 711; Congdon v. Congdon, 160 Minn. 343, 200 N.W. 76, 87; Forest City Mfg. Co. v. International Ladies' Garment Workers' Union, Local No. 104, 233 Mo.App. 935, 111 S.W.2d 934; In re Crown Heights Hospital, 183 Misc. 563, 49 N.Y.S.2d 658, 660; Froelich and Kuttner, of Manila, P. I., V. Sutherland, 57 App.D.C. 294, 22 F.2d 870, 872.

A franchise possessed by one or more individuals, who subsist as a body politic, under a special denomination, and are vested by the policy of the law with the capacity of perpetual succession, and of acting in several respects, however numerous the association may be, as a single individual. 2 Kent, Comm. 267.

An artificial person or being, endowed by law with the capacity of perpetual succession; consisting either of a single individual, (termed a "corporation sole,") or of a collection of several individuals, (which is termed a "corporation aggregate.") 3 Steph.Comm. 166; 1 Bl.Comm. 467, 469. An intellectual body, created by law, composed of individuals united under a common name, the members of which succeed each other, so that the body continues always the same, notwithstanding the change of the individuals who compose it, and which, for certain purposes, is considered a natural person. Civil Code La. art. 427.

A "corporation" is more nearly a method than a thing, and the law, in dealing with a corporation, need not define it as a person or entity, or even as an embodiment of functions, rights, and duties. Farmers' Loan & Trust Co. v. Pierson, 222 N.Y.S. 532, 543, 130 Misc. 110.

The statement that a "corporation" is an artificial person or entity, apart from its members, is merely a description, in figurative language, of a corporation viewed as a collective body. McIntosh v. Dakota Trust Co., 52 N.D. 752, 204 N.W. 818, 825, 40 A.L.R. 1021.

A corporation is a collection of natural persons, joined together by their voluntary action or by legal compulsion, by or under the authority of an act of the Legislature, consisting either of a special charter or of a general permissive statute, to accomplish some purpose, pecuniary, ideal, or governmental, authorized by the charter or governing statute. State v. Knights of Ku Klux Klan, 117 Kan. 564, 232 P. 254, 257, 37 A.L.R. 1267.

Classification

According to the accepted definitions and rules, corporations are classified as follows:

Public and private. A public corporation is one created by the state for political purposes and to act as an agency in the administration of civil government, generally within a particular territory or subdivision of the state, and usually invested, for that purpose, with subordinate and local powers of legislation; such as a county, city, town, or school district. These are also sometimes called "political corporations." Goodwin v. East Hartford, 70 Conn. 18, 38 A. 876; Dean v. Davis, 51 Cal. 409; Ten Eyck v. Canal Co., 18 N.J. Law, 200, 37 Am.Dec. 233; Murphy v. Mercer County, 57 N.J.Law, 245, 31 A. 229; Van Campen v. Olean General Hospital, 210 App.Div. 204, 205 N.Y.S. 554, 555; Providence Engineering Corporation v. Downey Snipbuilding Corporation, C.C.A. N.Y., 294 F. 641, 646; National Bank of Commerce in New Orleans v. Board of Sup'rs of La. State University and Agricultural and Mechanical Corlege, 206 La. 913, 20 So.2d 264, 269.

Private corporations are those founded by and composed of private individuals, for private pur

poses, as distinguished from governmental purposes, and having no political or governmental franchises or duties. Santa Clara County v. Southern Pac. R. Co., C.C.Cal., 18 F. 385, 402; People v. McAdams, 82 Ill. 361; Providence Engineering Corporation v. Downey Shipbuilding Corporation, C.C.A.N.Y., 294 F. 641, 648.

The true distinction between public and private corporations is that the former are organized for governmental purposes, the latter not. The term "public" has sometimes been applied to corporations of which the government owned the entire stock, as in the case of a state bank. But bearing in mind that "public" is here equivalent to "political," IA will be apparent that this is a misnomer. Again the fact that the business or operations of *a* corporation may directly and very extensively affect the general public (as in the case of a railroad company or a bank or an insurance company) is no reason for calling it a public corporation. If organized by private persons for their own advantage,—or even if organized for the benefit of the public generally, as in the case of a free public hospital or other charitable institution,--it is none the less a private corporation, if it does not possess governmental powers or functions. The uses may in a sense be called "public," but the corporation is "private," as much so as if the franchises were vested in a single person. Dartmouth College v. Woodward, 4 Wheat. 562, 4 L.Ed. 629; Ten Eyok v. Canal Co., 18 N.J.Law, 204, 37 Am.Dec. 233. It is to be observed, however, that those corporations which serve the public or contribute to the comfort and convenience of the general public, though owned and managed by private interests, are now (and quite appropriately) denominated "public-service corporations." See *infra*. Another distinction between public and private corporations is that the former are not voluntary associations (as the latter are) and that there is no contractual relation between the government and a public corporation or between the individuals who compose it. Mor.Priv.Corp. § 3; Goodwin v. East Hartford, 70 Conn. 18, 38 A. 876.

The terms "public" and "municipal," as applied to corporations, are not convertible. All municipal corporations are public, but not vice versa. Brown v. Board of Education, 108 Ky. 783, 57 S.W. 612. But there may also be "public" corporations which are not "municipal" even in this wider sense of the latter term. Such, according to some of the authorities, are the "irrigation districts" now known in several of the western states. Irrigation Dist. v. Collins, 46 Neb. 411, 64 N.W. 1086. Compare Herring *v.* Modesta Irrigation Dist., C.C.Cal., 95 F. 705.

Ecclesiastical and lay. In the English law, all corporations private are divided into ecclesiastical and lay, the former being such corporations as are composed exclusively of ecclesiastics organized for spiritual purposes, or for administering property held for religious uses, such as bishops and certain other dignitaries of the church and (formerly) abbeys and monasteries. 1 Bl. Comm. 470. Lay corporations are those composed of laymen, and existing for secular or business purposes. This distinction is not recognized in. American law. Corporations formed for the purpose of maintaining or propagating religion or of supporting public religious services, according to the rites of particular denominations, and incidentally owning and administering real and personal property for religious uses, are called "religious corporations," as distinguished from business corporations; but they are "lay" corporations, and not "ecclesiastical" in the sense of the English law. Robertson v. Bullions, 11 N.Y. 243.

Eleemosynary and civil. Lay corporations are classified as "eleemosynary" and "civil;" the former being such as are created for the distribution of alms or for the administration of charities or for purposes falling under the description of "charitable" in its widest sense, including hospitals, asylums, and colleges; the latter being organized for the facilitating of business transactions and the profit or advantage of the members. 1 Bl.Comm. 471; Dartmouth College v. Woodward, 4 Wheat. 660, 4 L.Ed. 629.

In the law of Louisiana, the term "civil" as applied to corporations, is used in a different sense, being contrasted with "religious." Civil corporations are those which relate to temporal police; such are the corporations of the cities, the companies for the advancement of commerce and agriculture, literary societies, colleges or universities founded for the instruction of youth, and the like. Religious corporations are those whose establishment relates only to religion; such are the congregations of the different religious persuasions. Civ.Code La. art. 431.

Aggregate and sole. A corporation sole is one consisting of one person only, and his successors in some ,particular station, who are incorporated bylaw in order to give them some legal capacities and advantages, particularly that of perpetuity, which in their natural persons they could not have had. In this sense, the sovereign in England is a sole corporation, so is a bishop, so are some deans distinct from their several chapters, and so is every parson and vicar. 3 Steph.Comm. 168, 169; First Parish v. Dunning, 7 Mass. 447; Reid v. Barry, 93 Fla. 849, 112 So. 846, 859.

A corporation aggregate is one composed of a number of individuals vested with corporate powers; and a "corporation," as the word is used in general popular and legal speech, and as defined at the head of this title, means a "corporation aggregate."

Domestic and foreign. With reference to the laws and the courts of any given state, a "domestic" corporation is one created by, or organized under, the laws of that state; a "foreign" corporation is one created by or under the laws of another state, government, or country. In re Grand Lodge, 110 Pa. 613, 1 A. 582; Fowler v. Chillingworth, 94 Fla. 1, 113 So. 667, 669; In re Ewles' Estate, 105 Utah 507, 143 P.2d 903, 905.

Close and open. A "close" corporation is one in which the directors and officers have the power to fill vacancies in their own number, without allowing to the general body of stockholders any choice or vote in their election. An "open" corporation is one in which all the members or corporators have a vote in the election of the directors and other officers. McKim v. Odom, 3 Bland, Md., 416.

A close corporation is one which fills its own vacancies or in which power of voting is held through manipulation under fixed and virtually perpetual proxies. Brooks v. Willcuts, C.C.A.Minn., 78 F.2d 270, 273.

Subsidiary and parent. Subsidiary corporation is one in which another corporation (called parent 'corporation) owns at least a majority of the shares, and thus has control. Wheeler v. New York, N. H. and H. R. Co., 112 Conn. 510, 153 A. 159, 160; International Order of Twelve Knights and Daughters of Tabor v. Fridia, Tex.Civ.App., 91 S.W.2d 404.

Other Compound and Descriptive Terms

A business corporation. One formed for the purpose of transacting business in the widest sense of that term, including not only trade and commerce, but manufacturing, mining, banking, insurance, transportation, and practically every form of commercial or industrial activity where the purpose of the organization is pecuniary profit; contrasted with religious, charitable, educational, and other like organizations, which are sometimes grouped in the statutory law of a state under the general designation of "corporations not for profit." Winter v. Railroad Co., 30 Fed.Cas. 329; McLeod v. College, 69 Neb. 550, 96 N.W. 265.

Corporation de facto. One existing under color of law and in pursuance of an effort made in good faith to organize a corporation under the statute; an association of men claiming to be a legally incorporated company, and exercising the powers and functions of a corporation, but without actual lawful authority to do so. Foster v. Hare, 26 Tex. Civ.App. 177, 62 S.W. 541; Cedar Rapids Water Co. v. Cedar Rapids, 118 Iowa, 234, 91 N.W. 1081; Tulare Irrig. Dist. v. Shepard, 185 U.S. 1, 22 S.Ct. 531, 46 L.Ed. 773; Evens v. Anderson, 132 Minn. 59, 155 N.W. 1040, 1041.

Its elements are a law or charter authorizing such a corporation, an attempt in good faith to comply with law authorizing its incorporation, and unintentional omission of essential requirements of the law or charter, and exercise in good faith of corporate functions under the law or charter. Richmond v. Town of Largo, 155 Fla. 226, 19 So.2d 791, 793.

Corporation de jure. That which exists by reason of full compliance by incorporators with requirements of an existing law permitting organization of such corporation; it is impregnable to assault in the courts from any source. Henderson *v.* School Dist. No. 44, 75 Mont. 154, 242 P. 979, 980.

Joint-stock corporation. This differs from a joint-stock *company* in being regularly incorporated, instead of being a mere partnership, but resembles it in having a capital divided into shares of stock. Most business corporations (as distinguished from eleemosynary corporations) are of this character.

A "joint-stock corporation" is one organized under a general statute authorizing the creation of such corporations and providing the procedure for creating it, and is distinguished from a "corporation" created by special resolution or act of the Legislature, which resolution or act is the charter of the corporation, when accepted, and the corporation organized thereunder, and the corporation is a chartered corporation, as distinguished from a joint-stock corporation. Barber v. Morgan, 89 Conn. 583, 94 A. 984, 986, Ann.Cas.1916E, 102.

Migratory corporation. A corporation, organized under laws of another state than that of incorporators' residence for purpose of doing all or greater part of their business in state of their residence or in other state than that of incorporation. Toklan Royalty Corporation v. Tiffany, 193 Okl. 120, 141 P.2d 571, 573.

Moneyed corporations are, properly speaking, those dealing in money or in the business of receiving deposits, loaning money, and exchange; but in a wider sense the term is applied to all business corporations having a money capital and employing it in the conduct of their business. Mutual Ins. Co. v. Erie County, 4 N.Y. 444; In re California Pac. R. Co., 4 Fed.Cas. 1,060; Hobbs v. National Bank, C.C.A.N.Y., 101 F. 75, 41 C.C.A. 205.

Municipal corporations. See that title.

Public-service corporations. Those whose operations serve the needs of the general public or conduce to the comfort and convenience of an entire community, such as railroads, gas, water, and electric light companies. The business of such companies is said to be "affected with a public interest," and for that reason they are subject to legislative regulation and control to a greater extent than corporations not of this character. Washington & C. Ry. Co. v. Mobile & O. R. Co., C.C.A.Ala., 255 F. 12, 14.

Quasi corporations. Organizations resembling corporations; municipal societies or similar bodies which, though not true corporations in all respects, are yet recognized, by statutes or immemorial usage, as persons or aggregate corporations, with precise duties which may be enforced, and privileges which may be maintained, by suits at law. They may be considered *quasi* corporations, with limited powers, co-extensive with the duties imposed upon them by statute or usage, but restrained from a general use of the authority which belongs to those metaphysical persons by the common law. Scates v. King, 110 Ill. 456; Barnes v. District of Columbia, 91 U.S. 552, 23 L.Ed. 440.

This term is lacking in definiteness and precision. It appears to be applied indiscriminately (a) to all kinds of municipal corporations, the word "quasi" being introduced because it is said that these are not voluntary organizations like private corporations, but created by the legislature for its own purposes and without reference to the wishes of the people of the territory affected; (b) to all municipal corporations except cities and incorporated towns, the latter being considered the only true municipal corporations because they exist and act under charters or statutes of incorporation while counties, school districts, and the like are merely created or set off under general laws; (c) to municipal corporations possessing only a low order of corporate existence or the most limited range of corporate powers, such as hundreds in England, and counties, villages, and school districts in America.

A term applied to those bodies, or municipal societies, which, though not vested with the general powers of corporations, are yet recognized, by statutes or immemorial usage, as persons, or aggregate corporations, with precise duties, which may be enforced, and privileges, which may be maintained, by suits at law. State v. Hagen, 136 La. 868, 67 So. 935, 936.

There is a well-defined and marked distinction between municipal corporations proper and political or quasi corporations. Cities, towns, and villages are municipal corporations proper, while counties, townships, school districts, road districts, and the like are quasi corporations. City of East Cleveland v. Board of Education of City School Dist. of East Cleveland, 112 Ohio St. 607, 148 N.E. 350, 351.

"Quasi corporation" is a phrase used to designate bodies which possess a limited number of corporate powers, and which are low down in the scale or grade of corporate existence, and is generally applied to a body which exercises certain functions of a corporate character, but which has not been created a corporation by any statute, general or special. Eakle v. Board of Education of Independent School Dist. of Henry, 97 W.Va. 434, 125 S.E. 165, 167.

Quasi public corporation. This term Is sometimes applied to corporations which are not strictly public, in the sense of being organized for governniental purposes, but whose operations contribute to the comfort, convenience, or welfare of the general public, such as telegraph and telephone companies, gas, water, and electric light companies, and irrigation companies. More commonly and more correctly styled "public-service corporations." Wiemer v. Louisville Water Co., C.C.Ky., 130 F. 251; Campbell v. Watson, 62 N.J. Eq. 396, 50 A. 120; Burgess v. City of Brockton, 235 Mass. 95, 126 N.E. 456, 460; Van Valkenburgh v. Ford, Tex.Civ.App., 207 S.W. 405, 414; Borough of Mt. Union v. Kunz, 290 Pa. 356, 139 A. 118, 121.

There is a large class of private corporations which on account of special franchises conferred on them owe a duty to the public which they may be compelled to perform. This class of corporations is known as public service corporations, and in legal phraseology as "quasi public corporations," or corporations affected with a public interest. A "quasi public corporation" may be said to be a private corporation which has given to it certain powers of a public nature, such, for instance, as the power of eminent domain, in order to enable it to discharge its duties for the public benefit, in which respect it differs from an ordinary private corporation, the powers of which are given and exercised for the exclusive advantage of its stockholders. State ex rel.. Coco v. Riverside lrr. Co., 142 La. 10, 76 So. 216, 218.

The term is also applied to corporations of that class sometimes called "quasi municipal corporations," such as school districts; Courtright v. Consolidated Independent School Dist. of Mapleton, 203 Iowa, 26, 212 N.W. 368. 369; road districts; Road Improvement Dist. No. 7 of Poinsett County, Ark., v. Guardian Savings & Trust Co., C.C.A. Ark., 298 F. 272, 274; Taylor Coal Co. v. Board of Drainage Com'rs of Ohio County, 189 Ky. 793, 225 S. W. 368, 369; irrigation districts; Bonneville Irr. Dist. v. Ririe, 57 Utah, 306, 195 P. 204, 205; and counties, townships, etc. Forbes Pioneer Boat Line v. Board of Com'rs of Everglades Drainage Dist., 77 Fla. 742, 82 So. 346, 350.

Spiritual corporations. Corporations, the members of which are entirely spiritual persons, and incorporated as such, for the furtherance of religion and perpetuating the rights of the church.

Trading corporations. A commercial corporation engaged in buying and selling. The word "trading," is much narrower in scope than "business," as applied to corporations, and though a trading corporation is a business corporation, there are many business corporations which are not trading companies. Dartmouth College v. Woodward, 4 Wheat. 669, 4 L.Ed. 629; Adams v. Railroad Co., 1 Fed.Cas. 92.

Tramp corporations. Companies chartered in one state without any intention of doing business therein, but which carry on their business and operations wholly in other states. State v. Georgia Co., 112 N.C. 34, 17 S.E. 10, 19 L.R.A. 485.

Synonyms

The words "company" and "corporation" are commonly used as interchangeable terms. In strictness, however, a company is an association of persons for business or other purposes, embracing a considerable number of individuals, which may or may not be incorporated. In the former case, it is legally a partnership or a joint-stock company; in the latter case, it is properly called a "corporation." Goddard v. Railroad Co., 202 Ill. 362, 66 N.E. 1066. For the particulars in which corporations differ from "Joint-Stock Companies" and "Partnerships," see those titles.

CORPORATION ACT. In English law. The statute 13 Car. II. St. 2, c. 1; by which it was provided that no person should thereafter be elected to office in any corporate town that should not, within one year previously, have taken the sacrament of the Lord's Supper, according to the rites of the Church of England; and every person so elected was also required to take the oaths of allegiance and supremacy. 3 Steph.Comm. 103, 104; 4 Bl.Comm. 58. This statute is now repealed. 4 Steph.Comm. 511.

CORPORATION COURTS. Certain courts in Virginia described as follows: "For each city of the state, there shall be a court called a 'corporation court,' to be held by a judge, with like qualifications and elected in the same manner as judges of the county court." Code Va.1887, § 3050, Code 1919, § 5905.

CORPORATOR. A member of a corporation aggregate. Grant, Corp. 48; Seaborn v. Wingfield, 56 Nev. 260, 48 P.2d 881, 883.

CORPORE ET ANIMO. Lat. By the body and by the mind; by the physical act and by the mental intent. Dig. 41, 2, 3.

CORPOREAL. A term descriptive of such things as have an objective, material existence; perceptible by the senses of sight and touch; possessing a real body. Opposed to incorporeal and spiritual. Sullivan v. Richardson, 33 Fla. 1, 14 So. 692; Bourland v. State, 133 Tex.Cr.R. 544, 112 S.W.2d 720, 721.

There is a distinction between "corporeal" and "corporal." The former term means "possessing a body," that is, tangible, physical, material; the latter means "relating to or affecting a body," that is, bodily, external. Corporeal denotes the nature or physical existence of a body; corporal denotes its exterior or the co-ordination of it with some other body. Hence we speak of "corporeal hereditaments," but of "corporal punishment," "corporal touch," "corporal oath," etc.

CORPOREAL HEREDITAMENTS. See Hereditaments.

CORPOREAL PROPERTY. Such as affects the senses, and may be seen and handled, as opposed to incorporeal property, which cannot be seen or handled, and exists only in contemp[1]ation. Mozley & Whitley.

Thus a house is corporeal, but the annual rent payable for its occupation is incorporeal. Corporeal property is, if movable, capable of manual transfer ; if immovable, possession of it may be delivered up. But incorporeal property cannot be so transferred, but some other means must be adopted for its transfer, of which the most usual is an instrument in writing.

In Roman law, the distinction between things corporeal and incorporeal rested on the sense of touch; tangible objects only were considered corporeal. In modern law, all things which may be *perceived* by any of the bodily senses are termed corporeal, although a common definition of the word includes merely that which can be touched and seen. 14a C.J. 1424 (citing Abbott's Diet.). Marnett Oil & Gas Co. v. Munsey, Tex.Civ.App., 232 S.W. 867, 869; Sullivan v. Richardson, 33 Fla. 1, 116, 14 So. 692.

*The* term "property," however, is a generic term of extensive application. 32 Cyc. 647. In its strict legal sense, "property" is nothing but the right of dominion, possession, and disposition which may be acquired over physical things. Braceville Coal Co. v. People, 147 Ill. 66, 35 N.E. 62, 22 L.R.A. 340; Fears v. State, 102 Ga. 274, 29 S.E. 463; De Lauder v. Baltimore County, 94 Md. 1, 50 A. 427. It follows that from that point of view, there is no such thing as "tangible" property or "corporeal" property, and the only meaning which can in law he given to the expression "corporeal property" is the right to possess, use, occupy, and enjoy corporeal things and take the profits thereof. Transcontinental Oil Co. v. Emmerson, 298 Ill. 394, 131 N.E. 645, 648, 16 A.L.R. 507.

CORPS DIPLOMATIQUE. In international law. Ambassadors and diplomatic persons at any court or capital.

CORPSE. The dead body of a human being. 1 Russ. & R. 366, n.; 2 Term 733; 1 Leach 497; Com. v. Loring, 8 Pick., Mass., 370; Dig. 47. 12. 3. 7; 11. 7. 38; Code, 3. 44. 1; Co. 3d Inst. 203; 1 Russ.Cr. 629.

CORPUS. (Lat.) Body; an aggregate or mass, (of men, laws, or articles; ) physical substance, as distinguished from ihtellectual conception; the principal sum or capital, as distinguished from interest or income. In re Barron's Will, 163 Wis. 275, 155 N.W. 1087, 1089; United States Trust Co. of New York v. Heye, 181 App.Div. 544, 168 N.Y.S. 1051, 1057; Macy v. Ladd, 128 Misc. 732, 219 N.Y.S. 449, 460; In re Schley, 181 App.Div. 931, 173 N.Y.S. 317, 319.

A substantial or positive fact, as distinguished from what is equivocal and ambiguous. The *corpus delicti* (body of an offense) is the fact of its having been actually committed. Best, Pres. 269-279.

A corporeal act of any kind, (as distinguished from *animus* or mere intention,) on the part of him who wishes to acquire a thing, whereby he obtains the physical ability to exercise his power over it whenever he pleases. The word occurs frequently in this sense in the civil law. Mackeld. Rom.Law, § 248.

Corpus comitatus. The body of a county. The whole county, as distinguished from a part of it, or any particular place in it. U. S. v. Grush, 5 Mason, 290, Fed.Cas.No.15,268.

Corpus corporatum. A corporation; a corporate body, other than municipal.

Corpus *cum* causa. (The body with the cause.) An English writ which issued out of chancery, to remove both the *body* and the record, touching the *cause* of any man lying in execution upon a judgment for debt, into the king's bench, there to remain until he satisfied the judgment. Cowell; Blount.

Corpus delicti. The body of a crime. The body (material substance) upon which a crime has been committed, *e. g.,* the corpse of a murdered man, the charred remains of a house burned down. In a derivative sense, the substance or foundation of a crime; the substantial fact that a crime has been committed. People v. Dick, 37 Cal. 281; White v. State, 49 Ala. 347; Goldman v, Com., 100 Va. 865, 42 S.E. 923; State v. Schyhart, Mo. Sup., 199 S.W. 205, 211; State v. Brown, 103 S.C. 437, 88 S.E. 21, 22, L.R.A.1916D, 1295; State v. Johnson, 95 Utah 572, 83 P.2d 1010, 1014. When applied to any particular offense, the actual commission by some one of particular offense charged. Gorum v. State, 60 Okl.Cr. 248, 63 P.2d 765, 766.

Corpus pro corpore. In old records. Body for body. A phrase expressing the liability of manucaptors. 3 How.State Tr. 110.

CORPUS CHRISTI DAY. In English law. A feast instituted in 1264, in honor of the sacrament. 32 Hen. VIII. c. 21.

CORPUS HUMANUM NON RECIPIT IESTIMATIONEM. The human body does not admit of valuation. Hob. 59.

CORPUS JURIS. A body of law. A term used to signify a book comprehending several collections of law. There are two principal collections to which this name is given; the *Corpus Juris Civilis,* and the *Corpus Juris Canonici.* Also name of an encyclopaedic statement of the principles of Anglo-American law.

Corpus juris canonici. The body of the canon law. A compilation of the canon law, comprising the decrees and canons of the Roman Church, constituting the body of ecclesiastical law of that church.

Corpus juris civilis. The body of the civil law. The system of Roman jurisprudence compiled and codified under the direction of the emperor Justinian, in A.D. 528-534. This collection comprises the Institutes, Digest, (or Pandects,) Code, and Novels. The name is said to have been first applied to this collection early in the seventeenth century.

CORRECT ATTEST. These words, used before the signatures of bank directors to reports made to the commissioner of banking, mean not alone to bear witness, but to affirm to be true or genuine, and such words are appropriately used for the affirmation of persons in their official capacity to attest the truth of a writing. Eland State Bank v. Massachusetts Bonding & Ins. Co., .165 Wis. 493, 162 N.W. 662, 663.

CORRECTED POLICY. Policy issued after investigation of risk to correct misstatements in policy first issued. Sherri v. National Surety Co., of New York, 243 N.Y. 266, 153 N.E. 70, 71.

CORRECTION. Discipline; chastisement administered by a master or other person in authority to one who has committed an offense, for the purpose of curing his faults or bringing him into proper subjection.

CORRECTION, HOUSE OF. A prison for the reformation of petty or juvenile offenders.

CORRECTOR OF THE STAPLE. In old English law. A clerk belonging to the staple, to write and record the bargains of merchants there made.

CORREGIDOR. In Spanish law. A magistrate who took cognizance of various misdemeanors, and of civil matters. 2 White, New Recop. 53.

CORREI. Lat. In the civil law. Co-stipulators; joint stipulators.

CORREI CREDENDI. In the civil and Scotch law. Joint creditors; creditors *in solido.* Poth. Obl. pt. 2, c. 4, art. 3, § 11.

CORREI DEBENDI. In Scotch law. Two or more persons bound as principal debtors to another. Ersk.Inst. 3, 3, 74.

CORRELATIVE. Having a mutual or reciprocal relation, in such sense that the existence of one necessarily implies the existence of the other. *Father* and *son* are correlative terms. *Claim* and *duty* are correlative terms.

CORRESPONDENCE. Interchange of written communications. The letters written by a person and the answers written by the one to whom they are addressed.

CORROBORATE. To strengthen; to add weight or credibility to a thing by additional and confirming facts or evidence. Lassiteo v. Seaboard Air Line Ry. Co., 171 N.C. 283, 88 S.E. 335, 337; Bradley v. State, 19 Ala.App. 578, 99 So. 321, 322; Holmes v. State, 70 Tex.Cr.R. 423, 157 S.W. 487, 493; State v. Fullerton Lumber Co., 35 S.D. 410, 152 N.W. 708, 715; Kincaid v. State, 131 Tex.Cr. R. 101, 97 S.W.2d 175, 177.

The expression "corroborating circumstances" clearly does not mean facts which, independent of a confession, will warrant a conviction; for then the verdict would stand not on the confession, but upon those independent circumstances. To corroborate is to strengthen, to confirm by additional security, to add strength. The testimony of a witness is said to be corroborated when it is shown to correspond with the representation of some other witness, or to comport with some facts otherwise known or established. Corroborating circumstances, then, used in reference to a confession, are such as serve to strengthen it, to render it more probable; such, in short, as may serve to impress a jury with a belief in its truth. State v. Guild, 10 N.J.Law, 163, 18 Am. Dec. 404.

CORROBORATING EVIDENCE. Evidence supplementary to that already given and tending to strengthen or confirm it; additional evidence of a different character to the same point. In re Cardoner's Estate, 27 N.M. 105, 196 P. 327, 328; State v. Smith, 75 Mont. 22, 241 P. 522, 523; People v. Follette, 74 Cal.App. 178, 240 P. 502, 519; Radcliffe v. Chavez, 15 N.M. 258, 110 P. 699, 701.

CORROBORATIVE EVIDENCE. See Corroborating Evidence.

CORRUPT. Spoiled; tainted; vitiated; depraved; debased. Webster.

CORRUPT INTENT. A "corrupt intent," as an element of usury, consists in the charging or receiving of excessive interest with knowledge that it is prohibited by law and the purpose to violate the law. Ector v. Osborne, 179 N.C. 667, 103 S.E. 388, 389, 13 A.L.R. 1207; Teshner v. Roome, 106 Or. 382, 212 P. 473, 474. But see Dege v. Produce Exchange Bank of St. Paul, 212 Minn. 44, 2 N.W. 2d 423, 425, which only requires intent to receive more than the law permits for forbearance of money, but does not require that taker knows that he is violating usury law.

CORRUPT PRACTICES ACT. The Act of June 25, 1910, c. 392, 36 Stat. 822, which, like the English act of 1883 and supplements, dealt with "corrupt and illegal practices" in connection with elections, and which was repealed by the "Federal Corrupt Practices Act" of Feb. 28, 1925, c. 368, Title III, 2 U.S.C.A. § 241 et seq.

CORRUPTIO OPTIMI EST PESSIMA. Corruption of the best is worst. Jacobs v. Beecham, 221 U.S. 263, 31 S.Ct. 555, 55 L.Ed. 729.

CORRUPTION. Illegality; a vicious and fraudulent intention to evade the prohibitions of the law; something against or forbidden by law; moral turpitude or exactly opposite of honesty involving intentional disregard of law from improper motives. State v. Barnett, 60 Okl.Cr. 355, 69 P.2d 77, 87.

An act done with an intent to give some advantage inconsistent with official duty and the rights of others. Johnson v. U. S., C.C.A.Alaska, 260 F. 783, 786.

The act of an official or fiduciary person who unlawfully and wrongfully uses his station or character to procure some benefit for himself or for another person, contrary to duty and the rights of others. U. S. v. Johnson, C.C.Ga., 26 F. 682; Worsham v. Murchison, 66 Ga. 719; U. S. v. Edwards, C.C.Ala., 43 F. 67.

CORRUPTION OF BLOOD. In English law. The consequence of *attainder,* being that the attainted person could neither inherit lands or other hereditaments from his ancestor, nor retain those he already had, nor transmit them by descent to any heir, because his blood was considered in law to be corrupted. Avery v. Everett, 110 N.Y. 317, 18 N.E. 148, 1 L.R.A. 264; 1 Steph.Comm. 446. This was abolished by St. 3 & 4 Wm. IV. c. 106, and 33 & 34 Vict. c. 23, and is unknown in America. Const.U.S. art. 3, § 3.

CORRUPTLY. When used in a statute, this term generally imports a wrongful design to acquire some pecuniary or other advantage. Grebe v. State, 112 Neb. 715, 201 N.W. 143, 144; Bosselman v. U. S., C.C.A.N.Y., 239 F. 82, 86; State v. Shipman, 202 N.C. 518, 163 S.E. 657.

CORSELET. Ancient armor which covered the body.

CORSE-PRESENT. In old English law. A mortuary, thus termed because, when a mortuary became due on the death of a man, the best or second-best beast was, according to custom, offered or presented to the priest, and carried with the co:pse. In Wales a corse-present was due upon the death of a clergyman to the bishop of the diocese, till abolished by 12 Anne St. 2, c. 6. 2 Bl. Comm. 426; Stat. 21 Hen. VIII. cap. 6; Cowell.

CORSNED. In Saxon law. The morsel of execration. A species of ordeal in use among the Saxons, performed by eating a piece of bread over

which the priest had pronounced a certain imprecation. If the accused ate it freely, he was pronounced innocent; but, if it stuck in his throat, it was considered as a proof of his guilt. Crabb, Eng.Law, 30; 1 Reeve, Eng.Law, 21; 4 Bl.Comm. 345; Spelman, Gloss. 439.

CORTES. The name of the legislative assemblies, the parliament or congress, of Spain and Portugal.

CORTEX. The bark of a tree; the outer covering of anything.

CORTIS. A court or yard before a house. Blount.

CORTULARIUM, or CORTARIUM. In old records. A yard adjoining a country farm.

CORVEE. In French law. Gratuitous labor exacted from the villages or communities, especially for repairing roads, constructing bridges, etc. State v. Covington, 125 N.C. 641, 34 S.E. 272.

CORVEE SEIGNEURIALE. Services due the lord of the manor. Guyot, *1Up.Univ.,* 3 Low.C. 1.

COSA JUZGADA, In Spanish law. A cause or matter adjudged, *(res judicata.)* White, New Recop. b. 3, tit. 8, note.

COSAS COMUNES. In Spanish law. A term corresponding to the *res communes* of the Roman law, and descriptive of such things as are open to the equal and common enjoyment of all persons and not to be reduced to private ownership, such as the air, the sea, and the water of running streams. Hall, Mex.Law, 447; Lux v. Haggin, 69 Cal. 255, 10 P. 707.

COSBERING. See Coshering.

COSDUNA. In feudal law. A custom or tribute.

COSEN, COZEN. In old English law. To cheat. "A cosening knave." 3 Leon. 171.

COSENAGE. (Also spelled "Cosinage," "Cousinage.") In old English law. A writ that lay for the heir where the *tresail, e.,* the father of the *besail,* or great-grandfather, was seised of lands in fee at his death, and a stranger entered upon the land and abated. Fitzh.Nat.Brev. 221; 3 Bla. Comm. *186.

Kindred; cousinship; relationship; affinity. Stat. 4 Hen. III. cap. 8; 3 Bla.Comm. 186; Co. Litt. 160a.

COSENING. In old English law. An offense, mentioned in the old books, where anything was done deceitfully, whether belonging to contracts or not, which could not be properly termed by any special name. The same as the *stellionatus* of the civil law. Cowell; West.Symb. pt. 2, *Indictment, §* 68; Blount; 4 Bla.Comm. 158.

COSHERING. In old English law. A feudal prerogative or custom for lords to lie and feast themselves at their tenants' houses. Cowell.

COSMOPATHIC. Open to the access of supernormal knowledge or emotion supposedly from a preternatural world;— applied to methods of healing. Commonwealth v. Zimmerman, 221 Mass. 184, 108 N.E. 893, 895, Ann.Cas.1916A, 858.

COSMUS. Clean. Blount.

COSS. A term used by Europeans in India to denote a road-measure of about two miles, but differing in different parts. Wharton.

COST. Expense. Barton v. Bowlin, 111 Ark. 123, 163 S.W. 502, 504. The price paid, as for an article purchased for exportation, with all incidental charges paid at the place of exportation. Goodwin v. U. S., 2 Wash.C.C. 493, Fed.Cas.No.5,554. The amount originally expended in performing a particular act or operation, or for production or construction, as of a building. Kempf v. Ranger, 132 Minn. 64, 155 N.W. 1059, 1060; Hoggson Bros. v. Spiekerman, 161 N.Y.S. 930, 933, 175 App.Div. 144. Cost is sometimes used as equivalent to "value." Loughney v. Klein, C.C.A.Pa., 221 F. 197, 199.

Cost-book. In English law. A book in which a number of adventurers who have obtained permission to work a lode, and have agreed to share the enterprise in certain proportions, enter the agreement, and from time to time the receipts and expenditures of the mine, the names of the shareholders, their respective accounts with the mine, and transfers of shares. These associations are called "Cost-Book Mining Companies," and are governed by the general law of partnership. Lindl.Partn. *147.

Cost-plus contract. One which fixes the amount to be paid the contractor on a basis, generally, of the cost of the material and labor, plus an agreed percentage thereof. The Spica, C.C.A.N.Y., 289 F. 436, 445.

Cost price. That which is actually paid for goods. Buck v. Burk, 18 N.Y. 337; Esterman•Verkamp Co. v. Rouse, 211 Ky. 791, 278 S.W. 124, 127.

Costs of collection. Strictly, expenses involved in endeavoring to make collection, as of a promissory note; but as used in or with reference to such notes, the phrase is synonymous with attorney's fees. McClain v. Continental Supply Co., 66 Okl. 225, 168 P. 815, 818; Wood v. Ferguson, 71 Mont. 540, 230 P. 592, 594. It does not refer to costs of suit, which are recoverable by law. Cox v. Hagan, 125 Va. 656, 100 S.E. 666, 674.

CO-STIPULATOR. A joint promisor.

COSTS. A pecuniary allowance, made to the successful party, (and recoverable from the losing party,) for his expenses in prosecuting or defending a suit or a distinct proceeding within a suit. Stevens v. Bank, 168 N.Y. 560, 61 N.E. 904; Bennett v. Kroth, 37 Kan. 235, 15 P. 221, 1 Am.St.Rep. 248; Pezel v. Yerex, 56 Cal.App. 304, 205 P. 475, 478; In re Leary's Estate, 172 Misc. 286, 14 N.Y.S. 2d 960, 961.

Expenses pending suit as allowed or taxed by the court. Jones v. Adkins, 170 Ark. 288, 280 S.W. 389, 394.

Fees and charges required by law to be paid to the courts or some of their officers, the amount

of which is fixed by law. Blair v. Brownstone Oil & Refining Co., 20 Cal.App. 316, 128 P. 1022.

Costs and fees were originally altogether different in their nature. The one is an allowance to a *party* for expenses incurred in prosecuting or defending a suit; the other, a compensation to an *officer* for services rendered in the progress of a cause. Therefore, while an executor or administrator was not personally liable to his adversary for costs, yet, if at his instance an officer performed services for him, he had a personal demand for his fees. Musser v. Good, 11 Serg. & R., Pa., 247. Moreover, costs are an incident to the judgment; fees are compensation to public officers for services rendered individuals not in the course of litigation. Tillman v. Wood, 58 Ala. 579.

In Georgia, however, it is held that "costs," include all charges fixed by statute as compensation for services rendered by officers of the court in the progress of the cause. Welton. County *v.* Dean, 23 Ga.App. 97, 97 S.E. 561, 562.

There is no general or controlling provision or principle of law to the effect that attorney fees that may by statute be recovered by the winning party against the losing party in a suit or action are, or should be regarded as, costs in the case. "Costs" do not include attorney fees unless such fees are by a statute denominated costs or are by statute allowed to be recovered as costs in the case. State ex rel. Royal Ins. Co. v. Barrs, 87 Fla. 168, 99 So. 668, 669; McRostie v. City of Owatonna, 152 Minn. 63, 188 N.W. 52, 54; Littlefield v. Scott, Tex.Civ.App., 244 S.W. 824, 826; Calman v. Cox, Mo.App., 296 S.W. 845, 846; City of Los Angeles v. Abbott, 217 Cal. 184, 17 P.2d 993, 996.

But the word "costs" is frequently understood as including attorney fees. McClain v. Continental Supply Co., 66 Okl. 225, 168 P. 815, 817; Livesley v. Strauss, 104 Or. 356, 207 P. 1095; Lonoke County v. Reed, 122 Ark. 111, 182 S.W. 563, 564; J. I. Case Plow-Works v. J. I. Case Threshing Mach. Co., 162 Wis. 185, 155 N.W. 128, 138.

In England, the term "costs" is also used to designate the charges which an attorney or solidi-, tor is entitled to make and recover from his client, as his remuneration for professional services,, such as legal advice, attendances, drafting and copying documents, conducting legal proceedings, etc.

Bill of Costs. A certified, itemized statement of the amount of costs in an action or suit.

Certificate for Costs. In English practice, a certificate or memorandum drawn up and signed by the judge before whom a case was tried, setting out certain facts, the existence of which must be thus proved before the party is entitled, under the statutes, to recover costs.

Cost Bond, or Bond for Costs. A bond given by a party to an action to secure the eventual payment of such costs as may be awarded against him.

Costs de Incremento. Increased costs, costs of increase. Costs adjudged by the court in addition to those assessed by the jury. Day v. Woodworth, 13 How. 372, 14 L.Ed. 181.

Those extra expenses incurred which do not appear on the face of the proceedings, such as witnesses' expenses, fees to counsel, attendances, court fees, etc. Wharton.

Costs cf the Day. Costs which are incurred in preparing for the trial of a cause on a specified *day,* consisting of witnesses' fees, and other fees of attendance. Archb.N.Prac. 281; Ad.Eq. 343.

Costs to Abide Event. When an order is made by an appellate court reversing a judgment, with "costs to abide the event," the costs intended by the order include those of the appeal, so that, if the appellee is finally successful, he is entitled to tax the costs of the appeal. First Nat. Bank v. Fourth Nat. Bank, 84 N.Y. 469; Casualty Co. of America v. A. L. Swett Electric Light & Power Co., 121 Misc. 268, 200 N.Y.S. 79,6, 801.

Double Costs. The ordinary single costs of suit, and one-half of that amount in addition. 2 Tidd, Pr. 987. "Double" is not used here in its ordinary sense of "twice" the amount. Van Aulen v. Decker, 2 N.J.Law, 108; Gilbert v. Kennedy, 22 Mich. 19. But see Moran v. Hudson, 34 N.J.Law, 531. These costs are now abolished in England by St. 5 & 6 Vict. c. 97. Wharton,

Final Costs. Such costs as are to be paid at the end of the suit; costs, the liability for which depends upon the final result of the litigation. Goodyear v. Sawyer, C.C.Tenn., 17 F. 8.

Interlocutory Costs. In practice. Costs accruing upon proceedings in the intermediate stages of a cause, as distinguished from final costs; such as the costs of motions. 3 Chit.Gen.Pr. 597; Goodyear v. Sawyer, C.C.Tenn., 17 F. 6.

Security for Costs. In practice. A security which a defendant in an action may require of a plaintiff who does not reside within the jurisdiction of the court, for the payment of such costs as may be awarded to the defendant. 1 Tidd, Pr. 534. Ex parte Louisville & N. R. Co., 124 Ala. 547, 27 So. 239.

Treble Costs. A rate of costs given in certain actions, consisting, according to its technical import, of the common costs, half of these, and half of the latter. 2 Tidd, Pr. 988. The word "treble," in this application, is not understood in its literal sense of thrice the amount of single costs, but signifies merely the addition together of the three sums fixed as above. Id. Treble costs have been abolished in England, by St. 5 & 6 Vict. c. 97. In American law. In Pennsylvania and New Jersey the rule is different. When an act of assembly gives treble costs, the party is allowed three times the usual costs, with the exception that the fees of the officers are not to be trebled when they are not regularly or usually payable by the defendant. Shoemaker v. Nesbit, 2 Rawle, Pa., 203; Welsh v. Anthony, 16 Pa. 256; Mairs v. Sparks, 5 N.J.Law, 516.

COSTUMBRE. In Spanish law. Custom; an unwritten law established by usage, during a long space of time. Las Partidas, pt. 1, tit. 2, 1. 4.

CO-SURETIES. Joint sureties; two or more sureties to the same obligation. State of Arkansas v. Pufahl, C.C.A.Ark., 52 F.2d 116, 120; French v. Young, 292 Mich. 443, 290 N.W. 861, 862, 863.

COTA. A cot or hut. Blount.

COTAGIUM. In old English law. A cottage.

COTARIUS. In old English law. A cottager, who held in free socage, and paid a stated fine or rent in provisions or money, with some occasional personal services. See Coterellus.

COTENANCY. A tenancy by several distinct titles but by unity of possession, or any joint ownership or common interest with its grantor. Shepard v. Mt. Vernon Lumber Co., 192 Ala. 322, 68 So. 880, 881, 15 A.L.R. 23. The term is broad enough to comprise both tenancy in common and joint tenancy. Caldwell v. Farrier, Tex.Civ.App., 248 S.W. 425, 427.

COTERELLI. Anciently, a kind of peasantry who were outlaws; robbers. Blount.

COTERELLUS. In feudal law. A cottager; a servile tenant, who held in mere villenage; his person, issue, and goods were disposable at the lord's pleasure. A coterellus, therefore, occupied a less favorable position than a cotarius *(q. v.),* for the latter held by socage tenure. Cowell.

COTERIE. A fashionable association, or a knot of persons forming a particular circle. The origin of the term was purely commercial, signifying an association, in which each member furnished his part, and bore his share in the profit and loss. Wharton.

COTESWOLD. In old records. A place where there is no wood.

COTLAND. In old English law. Land held by a cottager, whether in socage or villenage. Cowell; Blount.

CO-TSETHLA. In old English law. The little seat or mansion belonging to a small farm.

COTSETHLAND. The seat of a cottage with the land belonging to it. Spelman.

COTSETUS. A cottager or cottage-holder who held by servile tenure and was bound to do the work of the lord. Cowell.

COTTAGE. In English law. A small dwelling-house that has no land belonging to it. Shep. Touch. 94; Emerton v. Selby, 2 Ld.Raym. 1015; Scholes v. Hargreaves, 5 Term, 46; Hubbard v. Hubbard, 15 Adol. & E. (N.S.) 240; Gibson v. Brockway, 8 N.H. 470, 31 Am.Dec. 200. It has been held that the term includes a two-family house, not being limited to a structure for the use of only one family. Jones v. Mulligan, N.J.Ch., 121 A. 608, 609.

COTTIER TENANCY. A species of tenancy in Ireland, constituted by an agreement in writing, and subject to the following terms: That the tenement consists of a dwelling-house with not more than half an acre of land; at a rental not exceeding £5 a year; the tenancy to be for not more than a month at a time; the landlord to keep the house in good repair. Landlord and Tenant Act, Ireland, 23 & 24 Viet. c. 154, § 81.

COTTOLENE. A registered trade-mark name for cooking fat. Imperial Cotto Sales Co. v. N. K. Fairbanks Co., 50 App.D.C. 250, 270 F. 686, 687.

COTTON. A term which is applicable to such substance in whatever state it exists after it has been gathered and before it is manufactured into some article of merchandise, whether the seed have been removed at the gin or whether it is lint cotton in the seed or in the bale. Freeman v. State, 156 Ark. 592, 247 S.W. 51.

COTTON GIN. A term sometimes used as synonymous with ginhouse. State v. Rodgers, 168 N.C. 112, 83 S.E. 161, 162.

COTTON LINTERS. Called also "linters." An inferior grade of cotton, obtained by reginning cotton seed. Commercial Union Assur. Co., Limited, of London, England, v. Creek Cotton Oil Co., 96 Oki. 189, 221 P. 499, 501.

COTTON MILL OF FACTORY. One which manufactures cotton from the raw state into a finished product. Dumas v. State, 17 Ala.App. 492, 86 So. 162, 163.

COTTON NOTES. Receipts given for each bale of cotton received on storage by a public warehouse. Fourth Nat. Bank v. St. Louis Cotton Compress Co., 11 Mo.App. 337.

COTTON SEASON. The season for buying and selling cotton between September 1 and the following May 1. Morris v. Hellums Co., 131 Ark. 585, 199 S.W. 927, 928.

COTUCA. Coat armor.

COTUCHANS. A term used in Domesday for peasants, boors, husbandmen.

COUC1IANT. Lying down; squatting. *Couchant and levant* (lying down and rising up) is a term applied to animals trespassing on the land of one other than their owner, for one night or longer. 3 Bl.Comm. 9.

COUCHER, or COURCHER. A factor who continues abroad for traffic, (37 Edw. III. c. 16;) also the general book wherein any corporation, etc., register their acts, (3 & 4 Edw. VI. c. 10.)

COULISSE. The stockbrokers' curb market in Paris.

COUNCIL. An assembly of persons for the purpose of concerting measures of state or municipal policy; hence called "councillors."

In American Law. The legislative body in the government of cities or boroughs. An advisory body selected to aid the executive; particularly in the colonial period (and at present in some of the United States) a body appointed to advise and assist the governor in his executive or judicial capacities or both. Opinion of the Justices, 14 Mass. 470; Opinion of the Justices, 3 Pick., Mass., 517; In re Adams, 4 Pick., Mass., 25; Answers of the Justices, 70 Me. 570.

Common Council. In American law. The lower or more numerous branch of the legislative assembly of a city. In English law. The councillors of the city of London. The parliament, also, was anciently called the "common council of the realm." Fleta, 2, 13.

Privy Council. See that title.

Select Council. The name given, in some states, to the upper house or branch of the council of a city.

COUNCIL OF CONCILIATION. By the Act 30 & 31 Viet. c. 105, power is given for the crown to grant licenses for the formation of councils of conciliation and arbitration, consisting of a certain number of masters and workmen in any trade or employment, having power to hear and determine all questions between masters and workmen which may be submitted to them by both parties, arising out of or with respect to the particular trade or manufacture, and incapable of being otherwise settled. They have power to apply to a justice to enforce the performance of their award. The members are elected by persons engaged in the trade. Davis, Bldg.Soc. 232; Sweet.

COUNCIL OF JUDGES. Under the English judicature act, 1873, § 75, an annual council of the judges of the supreme court is to be held, for the purpose of considering the operation of the new practice, offices, etc., introduced by the act, and of reporting to a secretary of state as to any alterations which they consider should be made in the law for the administration of justice. An extraordinary council may also be convened at any time by the lord chancellor. Sweet.

COUNCIL OF THE BAR. A body composed of members of the English bar which governs the bar. It hears complaints against barristers and reports its findings with recommendations to the benchers of the Inn of Court of which the barrister is a member, who alone can act. Leaming, Phila. Lawy. in Lond. Courts 67.

COUNCIL OF THE NORTH. A court instituted by Henry VIII. in 1537, to administer justice in Yorkshire and the four other northern counties. Under the presidency of Stratford, the court showed great rigor, bordering, it is alleged, on harshness. It was abolished by 16 Car. I., the same act which abolished the Star Chamber. Brown.

COUNSEL. 1. In practice. An advocate, counsellor, or pleader. 3 Bl.Comm. 26; 1 Kent, Comm. 307. One who assists his client with advice, and pleads for him in open court. One who has been admitted as an attorney and counsellor at law. Baker v. State, 9 Okl.Cr. 62, 130 P. 820, 821. See Counsellor.

Counsellors who are associated with those regularly retained in a cause, either for the purpose of advising as to the points of law involved, or preparing the case on its legal side, or arguing questions of law to the court, or preparing or conducting the case on its appearance before an appellate tribunal, are said to be "of counsel."

2. Knowledge. A grand jury is sworn to keep secret "the commonwealth's *counsel,* their fellows', and their own."

3. Advice given by one person to another in regard to a proposed line of conduct, claim, or contention. State v. Russell, 83 Wis. 330, 53 N.W. 441.

The words "counsel" and "advise" may be, and frequently are, used in criminal *law* to describe the offense of a person who, not actually doing the felonious act, by his will contributed to it or procured it to be done. Omer v. Corn., 95 Ky. 353, 25 S.W. 594.

Counsel's signature. This is required, in some jurisdictions, to be affixed to pleadings, etc., as affording the court a means of judging whether they are interposed in good faith and upon legal grounds. It has been held that the word "counsel" in this connection denotes a person capable of testifying, and that a certificate bearing only the firm signatures of partnerships of attorneys is insufficient. Benedict v. Seiberling, D.C., 17 F.2d 831, 838.

Junior counsel. The younger of the counsel employed on the same side of a case, or the one lower in standing or rank, or who is intrusted with the less important parts of the preparation or trial of the cause.

COUNSELLOR. An advocate or barrister. A member of the legal profession whose special function is to give counsel or advice as to the legal aspects of judicial controversies, or their preparation and management, and to appear in court for the conduct of trials, or the argument of causes, or presentation of motions, or any other legal business that takes him into the presence of the court.

In some of the states, the two words "counsellor" and "attorney" are used interchangeably to designate all lawyers. In others, the latter term alone is used, "counsellor" not being recognised as a technical name. In still others, the two are associated together as the full legal title of any person who has been admitted to practice in the courts; while in a few they denote different grades, it being prescribed that no one can become a counsellor until he has been an attorney for a specified time and has passed a second examination.

In the practice of the United States supreme court, the term denotes an officer who is employed by a party in a cause to conduct the same on its trial on his behalf. He differs from an attorney at law.

In the supreme court of the United States, the two degrees of attorney and counsel were at first kept separate, and no person was permitted to practice in both capacities, but the present practice is otherwise. Weeks, Attys. at Law, 54. It is the duty of the counsel to draft or review and correct the special pleadings, to manage the cause on trial, and, during the whole course of the suit, to apply established principles of law to the exigencies of the ease. 1 Kent, Comm. 307.

COUNT, v. In pleading. To declare; to recite; to state a case; to narrate the facts constituting a plaintiff's cause of action. In a special sense, to set out the claim or count of the demandant in a real action.

To plead orally; to plead or argue a case in court; to recite or read in court; to recite a count in court.

Count upon a statute. To make express reference to it, as the words "against the form of the statute" (or "by the force of the statute") "in such case made and provided." Richardson v. Fletcher, 74 Vt. 417, 52 A. 1064.

"Pleading the statute" is stating the facts which bring the case within it, and "counting" on it is making express reference to it by apt terms to show the source of right relied on. Atlantic Coast Line R. Co. v. State, 73 Fla. 609, 74 So. 595, 599.

COUNT, n. In pleading. The plaintiff's statement of his cause of action. The different parts of a declaration, each of which, if it stood alone, would constitute a ground for action. Used also to signify the several parts of an indictment, each charging a distinct offense. Boren v. State, 23 Tex.App. 28, 4 S.W. 463; Bailey v. Mosher, C. C.A.Neb., 63 F. 490, 11 C.C.A. 304; Ryan v. Riddle, 109 Mo.App. 115, 82 S.W. 1117.

"Count" and "charge" when used relative to allegations in an indictment or information are synonymous. State v. Thornton, 142 La. 797, 77 So. 634, 636; State v. Puckett, 39 N.M. 511, 50 P.2d 964, 965.

Count sur concessit solvere. A claim based upon a promise to pay ,—a count in the mayor's court of London. Under it the plaintiff can sue for any liquidated demand, but not for money due under a covenant. Particulars defining more precisely the nature of the claim must be delivered with the declaration. Odger, C. LI 1029.

Common counts. Certain general counts or forms inserted in a declaration in an action to recover a money debt, not founded on the circumstances of the individual case, but intended to guard against a possible variance, and to enable the plaintiff to take advantage of any ground of liability which the proof may disclose, within the general scope of the action. Nugent v. Teauchot, 67 Mich. 571, 35 N.W. 254.

In the action of *assumpsit,* these counts are as follows : For goods sold and delivered, or bargained and sold; for work done; for money lent; for money paid; for money received to the use of the plaintiff ; for interest; or for money due on an account stated.

General count. One stating in a general way the plaintiff's claim. Wertheim v. Casualty Co., 72 Vt. 326, 47 A. 1071.

Money counts. A species of common counts, so called from the subject-matter of them; embracing the *indebitatus assumpsit* count for money lent and advanced, for money paid and expended, and for money had and received, together with the *insimul computassent* count, or count for money due on an account stated. 1 Burrill, Pr. 132.

Omnibus count. A count which combines in one all the money counts with one for goods sold and delivered, work and labor, and an account stated. Webber v. Tivill, 2 Saund. 122; Griffin v. Murdock, 88 Me. 254, 34 A. 30.

Several counts. Where a plaintiff has several distinct causes of action, he is allowed to pursue them cumulatively in the same action, subject to certain rules which the law prescribes. Wharton.

Special count. As opposed to the common counts, in pleading, 'a special count is a statement of the actual facts of the particular case, or a count in which the plaintiff's claim is set forth with all needed particularity. Wertheim v. Casualty Co., 72 Vt. 326, 47 A. 1071.

COUNT. (Fr. *comte;* from the Latin *comes.)* An earl.

It gave way as a distinct title to the Saxon earl, but was retained in countess, viscount, and as the basis of county. *Termes de* la *ley;* 1 Bla.Comm. 398.

COUNT-OUT. In English parliamentary law. Forty members form a house of commons; and, though there be ever so many at the beginning of a debate, yet, if during the course of it the house should be deserted by the members, till reduced below the number of forty, any one member may have it adjourned upon its being counted; but a debate may be continued when only one member is left in the house, provided no one choose to move an adjournment. Wharton.

The words "count and count-out" refer to the count of the house of commons by the speaker. Forty members, including the speaker, are required to constitute a quorum. Each day after parliament is opened, the speaker counts the house. If forty members are not present he waits till four o'clock, and then counts the house again. If forty members are not then present, he at once adjourns it to the following meeting day. May, Parl.Prac. 219.

COUNTEE. In old English law. The most eminent dignity of a subject before the Conquest. He was *prcefectus* or *prcepositus comitatus,* and had the charge and custody of the county; but this authority is now vested in the sheriff. 9 Coke, 46.

COUNTENANCE. In old English law. Credit; estimation. Wharton. Also, encouragement; aiding and abetting. Cooper v. Johnson, 81 Mo. 487.

COUNTER, n. (Spelled, also, "Compter.") The name of two prisons formerly standing in London, but now demolished. They were the Poultry Counter and Wood Street Counter. Cowell; Whish.L.D.; Coke, 4th Inst. 248.

COUNTER, *adj.* Adverse; antagonistic; opposing or contradicting; contrary. Silliman v. Eddy, 8 How.Prac., N.Y., 122.

Counter-affidavit. An affidavit made and presented in contradiction or opposition to an affidavit which is made the basis or support of a motion or application.

Counter-bond. In old practice. A bond of indemnity. 2 Leon. 90.

Counterclaim. See that title.

Counter-deed. A secret writing, either before a notary or under a private seal, which destroys, invalidates, or alters a public one.

Counter-letter. A species of instrument of defeasance common in the civil law. It is executed by a party who has taken a deed of property, absolute on its face, but intended as security for a loan of money, and by it he agrees to reconvey the property on payment of a specified sum. The two instruments, taken together, constitute what is known in Louisiana as an *"antichresis," (q. v.).* Karcher v. Karcher, 138 La. 288, 70 So. 228, 229; Livingston v. Story, 11 Pet. 351, 9 L.Ed. 746.

Counter-mark. A sign put upon goods already marked; also the several marks put upon goods belonging to several persons, to show that they must not be opened, but in the presence of all the owners or their agents.

Counter-plea. See Plea.

Counter-security. A security given to one who has entered into a bond or become surety for another; a countervailing bond of indemnity.

COUNTERCLAIM. A claim presented by a defendant in opposition to or deduction from the claim of the plaintiff. A species of set-off or recoupment introduced by the codes of civil procedure in many of the states, of a broad and liberal character. Quoted in Wollan v. McKay, 24 Idaho, 691, 135 P. 832, 837.

It is an offensive as well as a defensive plea, which *is* not necessarily confined to the justice of plaintiff's claim, and it represents the right of the defendant to have the claims of the parties counterbalanced in whole or in part, with judgment to be entered for the excess, if any. Olsen v. McMaken & Pentzien, 139 Neb. 506, 297 N.W. 830, 833.

Its sole requisites are that it must tend to defeat or diminish plaintiff's demand, and that demands must be reciprocal. Bond v. Farmers & Merchants Nat. Bank, Los Angeles, 64 Cal.App.2d 842, 149 P.2d 722, 724; Dobbins v. Horsfall, 58 Cal. App.2d 23, 136 P.2d 35, 38.

It is in effect a new suit in which the party named as defendant under the bill is plaintiff and the party named as plaintiff under the bill is defendant. Roberts Min. & Mill. Co. v. Schrader, C.C.A.Nev., 95 F.2d 522, 524.

The term is broader in meaning than set-off or recoupment, and includes them both. Williams v. Williams, 192 N.C. 405, 135 S.E. 39, 40; Fricke v. W. E. Fuetterer Battery & Supplies Co., 220 Mo.App. 623, 288 S.W. 1000, 1002; Curtis-Warner Corporation v. Thirkettle, 99 N.J.Eq. 806, 134 A. 299, 302; Otto v. Lincoln Sav. Bank of Brooklyn, 51 N.Y.S.2d 561, 563, 268 App.Div. 400; 'Etna Life Ins. Co. v. Griffin, 200 N.C. 251, 156 S.E. 515, 516.

The counterclaim is a substitute for the cross-bill in equity. McAnarney v. Lembeck, 97 N.J.Eq. 361, 127 A. 197, 198; Vidal v. South American Securities Co., C.C.A.N.Y., 276 F. 855. It is but another name for a cross-petition, and may be so styled, especially in actions prosecuted by equitable proceedings. Taylor v. Wilson, 182 Ky. 592, 206 S.W. 865, 866; Clark v. Duncanson, 79 Okl. 180, 192 P. 806, 809, 16 A.L.R. 450.

Under rule 30 of Federal rules in equity see Fed.Rules Civ.Proc. rules 8, 13, 28 U.S.C.A., "counterclaim" means any claim, not such as to constitute a set-off, which, in equity, a defendant might assert against the plaintiff in the same suit. Terry Steam Turbine Co. v. B. F. Sturtevant Co., D.C.Mass., 204 F. 103, 105.

A counterclaim may be any cause of action in favor of defendants or some of them against plaintiffs or some of them, a person whom a plaintiff represents or a plaintiff and another person or persons alleged to be liable. New York Civ.Prac.Act, § 266.

A "counterclaim" must be a cause of action, and seeks affirmative relief, while a defense merely defeats the plaintiff's cause of action by a denial or confession and avoidance, and does not admit of affirmative relief to the defendant. Lovett v. Lovett, 93 Fla. 611, 112 So. 768, 780; Secor v. Siver, 165 Iowa, 673, 146 N.W. 845, 847.

COUNTEREXTENSION. In surgery, in connection with "Buck's extension" process, which is some uniform, continuous force or pull applied to the leg or foot below a break, to overcome the natural contraction of the muscles of the thigh, which have a strong tendency to pull the broken ends together and cause them to slip by each other and overlap, especially when the break is oblique across bone, "counterextension" denotes the pull upwards holding the body against the extension downwards, effected by a splint appliance, on the upper end of which is a ring fitting around the thigh and against the patient's groin. Sweet v. Douge, 145 Wash. 142, 259 P. 25.

COUNTERFEIT. In criminal law. To forge; to copy or imitate, without authority or right, and with a view to deceive or defraud, by passing the copy or thing forged for that which is original or genuine. Most commonly applied to the fraudulent and criminal imitation of money. State v. McKenzie, 42 Me. 392; U. S. v. Barrett, D.C.N.D., 111 F. 369; DeRose v. People, 64 Colo. 332, 171 P. 359, L.R.A.1918C, 1193; Metropolitan Nat. Bank v. National Surety Co., D.C.Minn., 48 F. 2d 611, 612.

COUNTERFEIT COIN. Coin not genuine, but resembling or apparently intended to resemble or pass for genuine coin, including genuine coin prepared or altered so as to resemble or pass for coin of a higher denomination. U. S. v. Hopkins, D.C.N.C., 26 F. 443; U. S. v. Bogart, 24 Fed.Cas. 1185; U. S. v. Gellman, D.C.Minn., 44 F.Supp. 360, 363.

COUNTERFEITER. In criminal law. One who unlawfully makes base coin in imitation of the true metal, or forges false currency, or any instrument of writing, bearing a likeness and similitude to that which is lawful and genuine, with an intention of deceiving and imposing upon mankind. Thirman v. Matthews, 1 Stew., Ala., 384.

COUNTER-FESANCE. The act of forging.

COUNTER LETTER. An agreement to reconvey where property has been passed by absolute deed with the intention that it shall serve as security only. Standard Oil Co. of Louisiana v. Futral, 204 La. 215, 15 So.2d 65, 73.

COUNTERMAND. A change or revocation of orders, authority, or instructions previously issued. It may be either express or implied; the former where the order or instruction already given is explicitly annulled or recalled; the latter where the party's conduct is incompatible with the further continuance of the order or instruction, as where a new order is given inconsistent with the former order.

COUNTERPART. In conveyancing. The corresponding part of an instrument; a duplicate or copy. Where an instrument of conveyance, as a lease, is executed in parts, that is, by having several copies or duplicates made and interchangeably executed, that which is executed by the grantor is usually called the "original," and the rest are "counterparts"; although, where all the parties execute every part, this renders them all originals. 2 Bl. Comm. 296; Shep. Touch. 50. Roosevelt v. Smith, 17 Misc.Rep. 323, 40 N.Y.S. 381. See Duplicate.

In granting lots subject to a ground-rent reserved to the grantor, both parties execute the deeds, of which there are two copies; although both are original, one of them is sometimes called the counterpart. See- 12 Vin.Abr. 104 Dane, Abr.Index; 7 Com.Dig. 443; Merlin, *Rip. Double Ecrit.*

COUNTERPART WRIT. A copy of the original writ, authorized to be issued to another county when the court has jurisdiction of the cause by reason of the fact that some of the defendants are residents- of the county or found therein. White v. Lea, 9 Lea, Tenn., 450.

COUNTER-ROLLS. In English law. The rolls which sheriffs have with the coroners, containing particulars of their proceedings, as well of appeals as of inquests, etc. 3 Edw. I. c. 10.

COUNTERSIGN. As a noun, the signature of a secretary or other subordinate officer to any writing signed by the principal or superior to vouch for the authenticity of it. Fifth Ave. Bank v. Railroad Co., 137 N.Y. 231, 33 N.E. 378, 19 L.R.A. 331; Gurnee v. Chicago, 40 Ill. 167.

As a verb, to sign in addition to the signature of another in order to attest the authenticity. Winsor v. Hunt, 29 Ariz. 504, 243 P. 407, 411; Henning v. American Ins. Co., 108 Kan. 194, 194 P. 647, 648; Waldo Bros. Co. v. Downing, 131 Me. 410, 163 A. 787, 789.

COUNTERVAIL. To counterbalance; to avail against with equal force or virtue; to compensate for, or serve as an equivalent of or substitute for.

COUNTERVAIL LIVERY. At common law, a release was a form of transfer of real estate where some right to it existed in one person but the actual possession was in another; and the possession in such case was said to "countervail livery," that is, it supplied the place of and rendered unnecessary the open and notorious delivery of possession required in other cases. Miller V. Emans, 19 N.Y. 387.

COUNTERVAILING EQUITY. See Equity.

COUNTEUR. In the time of Edward I, a pleader; also called a *Nurrator,* and *Serjeant-Counteur.* See Countors.

COUNTEZ, L. Fr. Count, or reckon. In old practice. A direction formerly given by the clerk of a court to the crier, after a jury was sworn, to *number* them; and which Blackstone says was given in his time, in good English, "count these." 4 Bl. Comm. 340, note (u.).

COUNTING UPON A STATUTE, See Count Upon a Statute.

COUNTORS. Advocates, or serjeants at law, whom a man retains to defend his cause and speak for him in court, for their fees. 1 Inst. 17.

COUNTRY. The portion of the earth's surface occupied by an independent nation or people, or the inhabitants of such territory.

In its primary meaning "country" signifies "place;" and, in a larger sense, the territory or dominions occupied by a community; or even waste and unpeopled sections or regions of the earth. But its metaphorical meaning is no less definite and well understood; and in common parlance, in historical and geographical writings, in diplomacy, legislation, treaties, and international codes, the word is employed to denote the population, the nation, the state, or the government, having possession and dominion over a territory. Stairs v. Peaslee, 18 How. 521, 15 L.Ed. 474; U. S. v. Recorder, 1 Blatchf. 218, 225, 5 N.Y.Leg.Obs. 286, Fed.Cas.No.16,129.

The word "country" as used in treaties made by the United States government, in so far as it applies to the United States, means the states of such country. Pagano v. Cerri, 93 Ohio St. 345, 112 N.E. 1037, 1039, L.R.A.1917A, 486.

In pleading and practice. The inhabitants of a district from which a jury is to be summoned; pais; a jury. 3 Bl.Comm. 349; 4 Bl. Comm. 349; Steph. Pl. 73, 78, 230.

COUNTRY WHENCE HE CAME. Within statute providing for deportation of aliens means country of alien's nativity, where domicile has not been acquired elsewhere. Immigration Act 1924, § 13, 8 U.S.C.A. § 213; 8 U.S.C.A. § 156. Schenck ex rel. Capodilupo v. Ward, C.C.A.Mass., 80 F.2d 422, 426.

Term means the country territorially rather than governmentally from which the alien came. Immigration Act 1917, § 20, 8 U.S.C.A. § 156. Moraitis v. Delany, D.C.Md., 46 F.Supp. 425, 430.

But deportation to "country whence alien came" would be complied with if the alien was returned to political dominion in exile and control of country from whence he came. Delany v. Moraitis, C.C.A.Md., 136 F.2d 129, 130, 131, 132, 133.

COUNTY. One of the civil divisions of a country for judicial and political purposes. 1 Bla. Comm. 113.

Etymologically, it denotes that portion of the country under the immediate government of a count or earl. 1 Bla. Comm. 116.

One of the principal subdivisions of the kingdom of England and of most of the states of the American Union, denoting a distinct portion of territory organized by itself for political and judicial purposes. In modern use, the word may denote either the territory marked off to form a county, or the citizens resident within such territory, taken collectively and considered as invested with political rights, or the county regarded as a municipal corporation possessing subordinate governmental powers, or an organized jural society invested with specific rights and duties. Eagle v. Beard, 33 Ark. 501; Wooster v. Plymouth, 62 N.H. 208; In re Becker, 179 App. Div. 789, 167 N.Y.S. 118, 119; Greb v. King County, 187 Wash. 587, 60 P.2d 690, 692.

In the English law, this word signifies the same as *shire,* -county being derived from the French, and *shire* from the Saxon. Both these words signify a circuit or portion of the realm into which the whole land is divided, for the better government thereof and the more easy administration of justice. There is no part of England that is not within some county; and the shirereeve *(sheriff)* was the governor of the province, under the *comes,* earl, or count.

Counties are political subdivisions of the state, created to aid in the administration of state law for the purpose of local self-government. Hunt v. Mohave County, 18 Ariz. 480, 162 P. 600, 602; Board of Com'rs of Osborne County v. City of Osborne, 104 Kan. 671, 180 P. 233, 234; Divide County v. Baird, 55 N.D. 45, 212 N.W. 236, 243, 51 A.L.R. 296; Dolezal v. Bostick, 41 Okl. 743, 139 P. 964, 968; Middlesex County v. City of Waltham, 278 Mass. 514, 180 N.E. 318, 319, and hence not "municipal corporations." Housing Authority of Birmingham Dist. v. Morris, 244 Ala. 557, 14 So.2d 527, 535.

Counties are held in some jurisdictions to be municipal corporations. Mosier v. Cowan, 295 Mich. 27, 294 N.W. 85, 86; Pacific Fruit & Produce Co. v. Oregon Liquor Control. Commission, D.C.Or., 41 F.Supp. 175, 179; and are sometimes said to be involuntary municipal corporations. Perkins v. Board of Com'rs of Cook County, 271 Ill. 449, 111 N.E. 580, 584, Ann.Cas.1917A, 27. Other cases, seeking to distinguish between the two, say that counties are agencies or political subdivisions of the state for governmental pur-

poses, and not, like municipal corporations, incorporations of the inhabitants of specified regions for purposes of local government. Dillwood v. Riecks, 42 Cal.App. 602, 184 P. 35, 37; Bexar County v. Linden, 110 Tex. 339, 220 S.W. 761. Counties are also said to be merely quasi corporations. Breathitt County v. Hagins, 183 Ky. 294, 207 S. W. 713, 714; MacKenzie v. Douglas County, 91 Or. 375, 178 P. 350, 352; Jefferson County ex rel. Grauman v. Jefferson County Fiscal Court, 274 Ky. 91, 118 S.W.2d 181, 184.

"Vicinage," in its primary and literary meaning, denotes a neighborhood or vicinity; a "county," on the other hand, is a definitely designated territory. Commonwealth v. Collins, 268 Pa. 295, 110 A. 738, 739.

Body of the county. The county at large, as distinguished from any particular place within it; a county considered as a territorial whole. Fluke v. State, 27 Okl.Cr. 234, 226 P. 118, 120.

County affairs. Those relating to the county in its organic and corporate capacity and included within its governmental or corporate powers. Scarbrough v. Wooten, 23 N.M. 616, 170 P. 743, 744. Such as affect the people of the county in question. Bradford v. Cole, 95 Okl. 35, 217 P. 470, 471.

County attorney. The public prosecutor. Kytka v. Weber County, 48 Utah, 421, 160 P. 111, 113.

A constitutional officer, acting under oath, vested with authority, and it is his duty to inquire into alleged violations of law, to institute criminal proceedings, and to represent the state in matters and proceedings in his county, he signs all informations, and may make application for leave to file information before examination, commitment, or admission to bail. State ex rel. Juhl v. District Court of First Judicial Dist. in and for Jefferson County, Mont., 107 Mont. 309, 84 P.2d 979, 981, 120 A.L.R. 353.

County board of equalization. A body created for the purpose of equalizing values of property subject to taxation. , Overland Co. v. Utter, 44 Idaho, 385, 257 P. 480, 482.

County board of supervisors. Is not the county, but a body of town and city officers acting for and on behalf of county in such matters as have been turned over to them by law. Cort v. Smith, 249 App.Div. 1, 291 N.Y.S. 54, 60.

County bonds. Broadly, any bonds issued by county officials to be paid for by a levy on a special taxing district, whether or not coextensive with the county. Forrey v. Board of Com'rs of Madison County, 189 Ind. 257, 126 N.E. 673.

County bridge. A bridge of the larger class, erected by the county, and which the county is liable to keep in repair. Boone County v. Mutchler, 137 Ind. 140, 36 N.E. 534.

County business. All business pertaining to the county as a corporate entity. City of Astoria v. Cornelius, 119 Or. 264, 240 P. 233, 235. All business of the county, and any other business of such county connected with or interrelated with the business of any other county properly within the jurisdiction of the county commissioners' court. Glenn v. Dallas County Bois d'Arc Island Levee Dist., Tex.Civ.App., 275 S.W. 137, 145.

County commissioners. Officers of a county, charged with a variety of administrative and executive duties, but principally with the management of the financial affairs of the county, its police regulations, and its corporate business. Sometimes the local laws *give* them limited judicial powers. In some states they are called "supervisors." Corn. v. Krickbaum, 199 Pa. 351, 49 A. 68.

In Georgia, the term is used interchangeably with "commissioners of roads and revenue." Morris v. Smith, 153 Ga. 438(2), 112 S.E. 468; Rhodes v. Jernigan, 155 Ga. 523, 117 S.E. 432, 434.

County corporate. A city or town, with more or less territory annexed, having the privilege to be a county of itself, and not to be comprised in any other county; such as London, York, Bristol, Norwich, and other cities in England. 1 Bl. Comm. 120. See State v. Finn, 4 Mo.App. 347. They differ in no material points from other counties.

County court. A court of high antiquity in England, incident to the jurisdiction of the sheriff. It is not a court of record, but may hold pleas of debt or damages, under the value of forty shillings. The freeholders of the county (anciently termed the "suitors" of the court) are the real judges in this court, and the sheriff is the ministerial officer. See 3 Bl. Comm. 35, 36; 3 Steph. Comm. 395. But in modern English law the name is appropriated to a system of tribunals established by the statute 9 & 10 Vict. c. 95, having a limited jurisdiction, principally for the recovery of small debts. It is also the name of certain tribunals of limited jurisdiction in the county of Middlesex, established under the statute 22 Geo. II. c. 33. In American law. The name is used in many of the states to designate the ordinary courts of record having jurisdiction for trials at nisi prius. Their powers generally comprise ordinary civil jurisdiction, also the charge and care of persons and estates coming within legal guardianship, a limited criminal jurisdiction, appellate jurisdiction over justices of the peace, etc.

County farm bureaus. Governmental agencies intrusted with the duty of disseminating among farmers scientific knowledge of an educational nature for the improvement of agriculture. State v. Miller, 104 Neb. 838, 178 N.W. 846, 848.

County funds. This term may include township funds, the legal title of which is in the county, which holds them for disbursement in accordance for the purpose for which they are created. Fidelity & Deposit Co. of Maryland v. Wilkinson County, 109 Miss. 879, 69 So. 865, 868. See, also, State v. McGraw, 74 Mont. 152, 240 P. 812, 817. Compare Board of Education v. Wake County, 167 N.C. 114, 83 S.E. 257, 258.

County general fund. A fund raised to meet the expenses incident to county government. County Board of Education v. Austin, 169 Ark. 436, 276 S.W. 2, 5.

County jail. A place of incarceration for the punishment of minor offenses and the custody of transient prisoners, where the ignominy of confinemeat is devoid of the infamous character

which an imprisonment in the state jail or penitentiary carries with it. U. S. v. Greenwald, D.C. Cal., 64 F. 8.

County line. This term, when used in a statute providing that the trial for an offense committed on a county line may be in either county divided by such line, is not to be given the geometrical definition of a "line" as having neither breadth nor thickness, but includes all of a fenced public highway dividing two counties, so that a prosecution for robbery committed upon the highway may be maintained in either county, regardless of the side of the center line of the highway upon which the offense was committed. Stone v. People, 71 Colo. 162, 204 P. 897, 898.

County line bridge. A bridge over a stream constituting the boundary line between two counties, one end of which bridge is in one county and the other end in another county. Newberry v. Hall County, 52 Ga.App. 472, 183 S.E. 664, 665.

County officers. Those whose general authority and jurisdiction are confined within the limits of the county in which they are appointed, who are appointed in and for a particular county, and whose duties apply only to that county, and through whom the county performs its usual political functions. State v. Burns, 38 Fla. 367, 21 So. 290; State v. Glenn, 7 Heisk., Tenn., 473; In re Carpenter, 7 Barb., N.Y., 34; Hamilton v. Monroe, Tex.Civ.App., 287 S.W. 304, 306; State ex rel. Osborn v. Eddington, 208 Ind. 160, 195 N.E. 92.

Public officers who fill a position usually provided for in the organization of counties and county governments, and are selected by the county to represent it continuously and as part of the regular and permanent administration of public power in carrying out certain acts with the performance of which it is charged in behalf of the public. Coulter v. Pool, 187 Cal. 181, 201 P. 120, 123.

County palatine. A term bestowed upon certain counties in England, the lords of which in former times enjoyed especial privileges. They might pardon treasons, murders, and felonies. All writs and indictments ran in their names, as in other counties in the king's; and all offenses were said to be done against their peace, and not, as in other places, *contra pacem domini regis.* But these privileges have in modern times nearly disappeared. 1 Holdsw. Hist. E. L. 49; 4 Inst. 205.

County powers. Such only as are expressly provided by law or which are necessarily implied from those expressed. Hersey v. Nelson, 47 Mont. 132, 131 P. 30, 32, Ann.Cas.1914C, 963.

County property. That which a county is authorized to acquire, hold, and sell. State v. Brown, 73 Mont. 371, 236 P. 548, 549; State v. Poland, 61 Mont. 600, 203 P. 352, 353.

County purposes. Those exercised by the county acting as a municipal corporation. Conrad v. Shearer, 197 Iowa 1078, 198 N.W. 633, 634.

As regards the rate of taxation, all purposes for which county taxation may be levied. Test whether a tax is levied for county purposes is whether it is for strictly county uses, for which county or its inhabitants alone would benefit, or is it for a purpose in which entire state is concerned and will profit. Public Utilities Commission v. Manley, 99 Colo. 153, 60 P.2d 913, 917. Seaboard Air Line Ry. Co. v. Wright, 34 Ga.App. 88, 128 S.E. 234, 235. With reference to budgets, all legitimate components of a county budget. Garrison v. Jersey City, 92 N.J.Law, 624, 105 A. 460, 462. The term has been held to apply only to the constantly recurring expenditures, such as salaries of county officers. Obenchain v. Daggett, 68 Or. 374, 137 P. 212, 214. But it has also been held not to be equivalent to "current expenses." Seaboard Air-Line Ry. Co. v. Wright, 157 Ga. 722, 122 S.E. 35, 36.

County rate. In English law. An imposition levied on the occupiers of lands, and applied to many miscellaneous purposes, among which the most important are those of defraying the expenses connected with prisons, reimbursing to private parties the costs they have incurred in prosecuting public offenders, and defraying the expenses of the county police. 15 & 16 Vict. c. 81.

County road. One which lies wholly within one county, and which is thereby distinguished from a state road, which is a road lying in two or more counties. State v. Wood County, 17 Ohio, 186.

County-seat. A county-seat or county-town is the chief town of a county, where the county buildings and courts are located and the county business transacted. Williams v. Reutzel, 60 Ark. 155, 29 S.W. 374; In re Allison, 13 Colo. 525, 22 P. 820, 10 L.R.A. 790; McGregor v. Cain, 177 Ark. 474, 7 S.W.2d 13, 14.

The county town as the seat of government. Dunne v. Rock Island County, 283 Iii. 628, 119 N.E. 591, 595. The place where the courthouse is situated, and the district and county courts are held. Turner v. Tucker, 113 Tex. 434, 258 S.W. 149, 150.

County sessions. In England, the court of general quarter sessions of the peace held in every county once in every quarter of a year. Mozley & Whitley.

County site. The seat of government of the county. Board of Revenue of Covington County v. Merrill, 193 Ala. 521, 68 So. 971, 977. The courthouse site. Board of Revenue of Jefferson County v. Huey, 195 Ala. 83, 70 So. 744, 746.

County tax. Tax exclusively for county purposes, in which state has no sovereign interest or responsibility, and which has no connection with duties of county in its relation to state. Amos v. Mathews, 99 Fla. 1, 126 So. 308, 323.

County-town. The county-seat; the town in which the seat of government of the county is located. State v. Cates, 105 Tenn. 441, 58 S.W. 649.

County treasury. Not the physical place of deposit, but the funds deposited to the credit of the county. State v. Kurtz, 110 Ohio St. 332, 144 N.E. 120, 123.

County warrant. An order or warrant drawn by some duly authorized officer of the county, directed to the county treasurer and directing him to pay out of the funds of the county a designated sum of money to a named individual, or to his order or to bearer. Savage v. Mathews, 98 Ala. 535, 13 So. 328; Crawford v. Noble County, 8 Okl. 450, 58 P. 616; Quinn v. Reed, 130 Ark. 116, 197

S.W. 15, 16; Tyler v. Shelby County, Tex., C.C.A. Tex., 47 F.2d 103, 105.

Foreign county. Any county having a judicial and municipal organization separate from that of the county where matters arising in the former county are called in question, though both may lie within the same state or country.

COUPLED WITH AN INTEREST. This phrase, in the law of agency, has reference to a writing creating, •conveying to, or vesting in the agent an interest in the estate or property which is the subject of the agency, as distinguished from the proceeds or profits resulting from the exercise of the agency. George H. Rucker & Co. v. Glennan, 130 Va. 511, 107 S.E. 725, 728.

COUPONS. Interest and dividend certificates; also those parts of a commercial instrument which are to be *cut,* and which are evidence of something connected with the contract mentioned in the instrument. They are generally attached to certificates of loan, where the interest *is* payable at particular periods, and, when the interest is paid, they are cut off and delivered to the payer. Wharton. Toon v. Wapinitia Irr. Co., 117 Or. 374, 243 P. 554, 556.

In England, they are known as *warrants* or *dividend warrants,* and the securities to which they belong, debentures; 13 C. B. 372.

Coupons are written contracts for the payment of a d3finite sum of money on a given day, and being drawn and executed in a form and mode for the purpose, that they may be separated from the bonds and other instruments to which they are usually attached, it is held that they are negotiable and that a suit may be maintained on them without the necessity of producing the bonds. Each matured coupon upon a negotiable bond is a separable promise, distinct from the promises to pay the bonds or the other coupons, and gives rise to a separate cause of action. Aurora v. West, 7 Wall. 88, 19 L.Ed. 42. Haven v. Depot Co., 109 Mass. 88; Thompson v. Perrine, 106 U.S. 589, 1 S.Ct. 564, 27 L.Ed. 298.

Coupon bonds. Bonds to which are attached coupons for the several successive installments of interest to maturity. Benwell v. Newark, 55 N. J.Eq. 260, 36 A. 668; Tennessee Bond Cases, 114 U.S. 663, 5 S.Ct. 974, 29 L.Ed. 281.

Coupon notes. Promissory notes with coupons attached, the coupons being notes for interest written at the bottom of the principal note, and designed to be cut off severally and presented for payment as they mature. Williams v. Moody, 95 Ga. 8, 22 S.E. 30.

COUR DE CASSATION. The supreme judicial tribunal of France, having appellate jurisdiction only. For an account of its composition and powers, see Jones, French Bar, 22; Guyot. Repert. Univ.

COURSE. In surveying, the direction of a line with reference to a meridian.

COURSE OF BUSINESS. What is usually done in the management of trade or business. Idom v. Weeks & Russell, 135 Miss. 65, 99 So. 761, 764; In re Malschick, D.C.Pa., 217 F. 492, 494.

In Workmen's Compensation Acts, the usual course of business of the employer covers the normal operations which form part of the ordinary business carried on, and not Including incidental and occasional operations having for their purpose the preservation of the premises or the appliances used in the business. Walker v. Industrial Accident Commission, 177 Cal. 737, 171 P. 954, 955, L.R.A. 1918F, 212.

Commercial paper is said to be transferred, or sales alleged to have been fraudulent may be shown to have been made, "in the course of business," or "in the usual and ordinary course of business," when the circumstances of the transaction are such as usually and ordinarily attend dealings of the same kind and do not exhibit any signs of haste, secrecy, or fraudulent intention. Walbrun v. Babbitt, 16 Wall. 581, 21 L.Ed. 489; Brooklyn, etc., R. Co. v. National Bank, 102 U.S. 14, 26 L.Ed. 61.

COURSE OF EMPLOYMENT. Those words as applied to compensation for injuries within the purview of Workmen's Compensation Acts, refer to the time, place, and circumstances under which the accident takes place. Fogg's Case, 125 Me. 168, 132 A. 129, 130; Brady v. Oregon Lumber Co., 117 Or. 188, 243 P. 96, 99, 45 A.L.R. 812; Walker v. Hyde, 43 Idaho, 625, 253 P. 1104, 1105; Wilson v. Town of Mooresville, 222 N.C. 283, 22 S.E.2d 907, 910. A workman is in course of employment when, within time covered by employment, he is doing something which he might reasonably do while so employed at proper place. Dambold v. Industrial Commission, 323 Ill. 377, 154 N.E. 128, 129; In re Employers' Liability Assur. Corporation, 215 Mass. 497, 102 N.E. 697, L.R.A.1916A, 306; Conrad v. Cook-Lewis Foundry Co., 198 N.C. 723, 153 S.E. 266, 269; In re McCrary, 109 Neb. 796, 192 N.W. 237, 239.

In order that an injury may arise out of and in the course of employment, it must be received while the workman is doing the duty he is employed to perform and also as a natural incident of the work flowing therefrom as a natural consequence and directly connected therewith. Di Salvio v. Menihan Co., 225 N.Y. 123, 121 N.E. 766, 767. "In course of employment," as used in Workmen's Compensation Act, means in service of master, and is not synonymous with "during the period covered by his actual. employment." An injury, to be within course of employment, must occur during hours of employment, which includes hours of leisure set apart in working hours for rest, recreation, or refreshment, but not time when employee is off premises, not engaged in employer's business, or at home preparing for work, or coming to or leaving work. Shofiler v. Lehigh Valley Coal Co., 290 Pa. 480, 139 A. 192, 193. An employee, even after closing time, is in the "course of employment" until a suitable opportunity has been given for him to leave the place of work. Field v. Charmette Knitted Fabric Co., 245 N.Y. 139, 156 N.E. 642, 643; Munn v. Industrial Board, 274 Ill. 70, 113 N.E. 110, 112.

The expression "in the course of his employment," in the rule that a master is liable for the torts of his servant done in the course of his employment, means while engaged in the service of the master, while engaged generally in the master's work, as distinguished from acts done when the servant steps outside of his employment to do an act for himself, not connected with his master's business. Sina v. Carlson, 120 Minn. 283, 139 N.W. 601, 602. And see Birmingham Ledger Co. v. Buchanan, 10 Ala.App. 527, 65 So. 667, 670.

See, also, Arising Out of and in the Course of Employment.

COURSE OF RIVER. The course of a river is a line parallel with its banks; the term is not synonymous with the "current" of the river. Attorney General v. Railroad Co., 9 N.J.Eq. 550.

COURSE OF THE VOYAGE. By this term is understood the regular and customary track, if such there be, which a ship takes in going from one port to another, and the shortest way. Marsh. Ins. 185; Phi11. Ins. 981.

COURSE OF TRADE. What is customarily or ordinarily done in the management of trade or business.

COURSE OF VEIN. In mining, the "course of the vein" appearing on the surface is the course of its apex, which is generally inclined and undulated and departs more or less materially from the strike. Stewart Mining Co. v. Bourne, C.C.A. Idaho, 218 F. 327, 329.

COURSE OF VESSEL. In navigation, the "course" of a vessel is her apparent course, and not her heading at any given moment. The Eastern Glade, C.C.A.N.Y., 101 F.2d *A,* 6. It is her actual course. Liverpool, Brazil & River Plate Steam Na$^{y}$. Co. v. U. S., D.C.N.Y., 12 F.2d 128, 129.

COURT. A space which is uncovered, but which may be partly or wholly inclosed by buildings or walls. Smith v. Martin, 95 Okl. 271, 219 P. 312, 313. When used in connection with a street, indicates a short street, blind alley, or open space like a short street inclosed by dwellings or other buildings facing thereon. City of Miami v. Saunders, 151 Fla. 699, 10 So.2d 326, 329.

### Legislation

A legislative assembly. Parliament is called In the old books a court of the king, nobility, and commons assembled. Finch, Law, b. 4, c. 1, p. 233; Fleta, lib. 2, c. 2.

The application of the term—which originally denoted the place of assembling—to denote the assemblage, resembles the similar application of the Latin term *curia,* and *is* readily explained by the fact that the earlier courts were merely assemblages, in the court-yard of the baron or of the king himself, of those who were qualified and whose duty it was so to appear at stated times or upon summons. Traces of this usage and constitution of courts still remain in the courts baron, the various courts for the trial of Impeachments in England and the United States, and in the control exercised by the parliament of England and the legislatures of the various states of the United States over the organization of courts of justice, as constituted in modern times. This meaning of the word has also been retained in the titles of some deliberative bodies, such as the "general court" of Massachusetts, *i. e.,* the legislature.

### International Law

The person and suite of the sovereign; the place where the sovereign sojourns with his regal retinue, wherever that may be. The English government is spoken of in diplomacy as the court of St. James, because the palace of St. James is the official palace.

### Practice

An organ of the government, belonging to the judicial department, whose function is the application of the laws to controversies brought before it and the public administration of justice. White County v. Gwin, 136 Ind. 562, 36 N.E. 237, 22 L. R.A. 402; Bradley v. Town of Bloomfield, 85 N.J. Law, 506, 89 A. 1009.

The presence of a sufficient number of the members of such a body regularly convened in an authorized place at an appointed time, engaged in the full and regular performance of its functions. Brumley v. State, 20 Ark. 77; Wightman v. Karsner, 20 Ala. 446.

A body in the government to which the administration of justice is delegated. A body organized to administer justice, and including both judge and jury. Houston Belt & Terminal Ry. Co. v. Lynch, Tex.Com.App., 221 S.W. 959, 960; People ex rel. Thaw v. Grifenhagen, Sup., 154 N.Y.S. 965, 970; Peterson v. Fargo-Moorhead St. Ry. Co., 37 N.D. 440, 164 N.W. 42, 49.

A tribunal officially assembled under authority of law at the appropriate time and place, for the administration of justice. In re Carter's Estate, 254 Pa. 518, 99 A. 58.

An agency of the sovereign created by it directly or indirectly under its authority, consisting of one or more officers, established and maintained for the purpose of hearing and determining issues of law and fact regarding legal rights and alleged violations thereof, and of applying the sanctions of the law, authorized to exercise its powers in due course of law at times and places previously determined by lawful authority. Isbill v. Stovall, Tex.Civ.App., 92 S.W.2d 1067, 1070.

An incorporeal, political being, composed of one or more judges, who sit at fixed times and places, attended by proper officers, pursuant to lawful authority, for the administration of justice. State v. Le Blond, 108 Ohio St. 126, 140 N.E. 510, 512. An organized body with defined powers, meeting at certain times and places for the hearing and decision of causes and other matters brought before it, and aided in this, its proper business, by its proper officers, viz., attorneys and counsel to present and manage the business, clerks to record and attest its acts and decisions, and ministerial officers to execute its commands, and secure due order in its proceedings. Ex parte Gardner, 22 Nev. 280, 39 P. 570; Hertzen v. Hertzen, 104 Or. 423, 208 P. 580, 582.

It is a passive forum for adjusting disputes and has no power to investigate facts or to initiate proceedings. Sale v. Railroad Commission, 15 Ca1.2d 612, 104 P.2d 38, 41.

The place where justice is judicially administered. Co. Litt. 58a; 3 Bl. Comm. 23. Railroad Co. v. Harden, 113 Ga. 456, 38 S.E. 950; Croft v. Croft, 119 N.J.Eq. 468, 182 A. 853.

The judge, or the body of judges, presiding over a court.

The words "court" and "judge," or "judges," are frequently used in statutes as synonymous. When used with reference to orders made by the court or judges, they are to be so understood. State v. Caywood, 96 Iowa, 367, 65 N.W. 385; Sale v. Railroad Commission, 15 Ca1.2d 612, 104 P.2d 38, 41.

The word "court" is often employed in statutes otherwise than in its strict technical sense, and is applied to various tribunals not judicial in their character, State v. Howat, 107 Kan. 423, 191 P. 585, 589; for example, in New Jersey, the "court of pardons"; In re Court of Pardons, 97 N.J.Eq. 555, 129 A. 624, 625.

### Classification

Courts may be classified and divided according to several methods, the following being the more usual:

Courts of record and courts not of record. The former being those whose acts and judicial proceedings are enrolled, or recorded, for a perpetual

memory and testimony, and which have power to fine or imprison for contempt. Error lies to their judgments, and they generally possess a seal. Courts not of record are those of inferior dignity, which have no power to fine or imprison, and in which the proceedings are not enrolled or recorded. 3 Bl. Comm. 24; 3 Steph. Comm. 383; The Thomas Fletcher, C.C.Ga., 24 F. 481; Ex parte Thistleton, 52 Cal. 225; Erwin v. U. S., D.C.Ga., 37 F. 488, 2 L.R.A. 229; Heininger v. Davis, 96 Ohio St. 205, 117 N.E. 229, 231.

A "court of record" is a judicial tribunal having attributes and exercising functions independently of the person of the magistrate designated generally to hold it, and proceeding according to the course of common law, its acts and proceedings being enrolled for a perpetual memorial. Jones v. Jones, 188 Mo.App. 220, 175 S.W. 227, 229; Ex parte Gladhill, 8 Metc., Mass., 171, per Shaw, C. J. See, also, Ledwith v. Rosalsky, 244 N.Y. 406, 155 N.E. 688, 689.

Courts may be at the same time of record for some purposes and not of record for others. Lester v. Redmond, 6 Hill, N.Y., 590; Ex parte Gladhill, 8 Metc., Mass., 168.

Superior and inferior courts. The former being courts of general original jurisdiction in the first instance, and which exercise a control or supervision over a system of lower courts, either by appeal, error, or *certiorari;* the latter being courts of small or restricted jurisdiction, and subject to the review or correction of higher courts. Sometimes the former term is used to denote a particular group or system of courts of high powers, and all others are called "inferior courts."

To constitute a court a superior court as to any class of actions, within the common-law meaning of that term, its jurisdiction of such actions must be unconditional, so that the only thing requisite to enable the court to take cognizance of them is the acquisition of jurisdiction of the persons of the parties. Simons v. De Bare, 4 Bosw., N.Y., 547.

An inferior court is a court whose judgments or decrees can be reviewed, on appeal or writ of error, by a higher tribunal, whether that tribunal be the circuit or supreme court. Nugent v. State, 18 Ala. 521.

Civil and criminal courts. The former being such as are established for the adjudication of controversies between subject and subject, or the ascertainment, enforcement, and redress of private rights; the latter, such as are charged with the administration of the criminal laws, and the punishment of wrongs to the public.

Equity courts and law courts. The former being such as possess the jurisdiction of a chancellor, apply the rules and principles of chancery law, and follow the procedure in equity; the latter, such as have no equitable powers, but administer justice according to the rules and practice of the common law.

As to the division of courts according to their *jurisdiction,* see Jurisdiction.

As to several names or kinds of courts not specifically described in the titles immediately following, see Arches Court, Appellate, Circuit Courts, Consistory Courts, County, Customary Court-Baron, Ecclesiastical Courts, Federal Courts, Forest Courts, High Commission Court, Instance Court, Justice Court, Justiciary Court, Legislative Courts, Maritime Court, Mayor's Court, Moot Court, Municipal Court, Orphans' Court, Police Court, Prerogative Court, Prize Court, Probate Court, Superior Courts, Supreme Court, and Surrogate's Court.

As to court-hand, court-house, court-lands, court rolls, courtyard, see those titles in their alphabetical order *infra.*

General

Court above, court below. In appellate practice, the "court above" is the one to which a cause is removed for review, whether by appeal, writ of error, or certiorari; while the "court below" is the one from which the case is removed. Going v. Schnell, 6 Ohio Dec. 933.

Court in bank. A meeting of all the judges of a court, usually for the purpose of hearing arguments on demurrers, points reserved, motions for new trial, etc., as distinguished from sessions of the same court presided over by a single judge or justice.

Court of competent jurisdiction. One having power and authority of law at the time of acting to do the particular act. Ex parte Plaistridge, 68 Okl. 256, 173 P. 646, 647.

One having jurisdiction under the state Constitution and laws to determine the question in controversy. Texas Employers' Ins. Ass'n v. Nunamaker, Tex.Civ.App., 267 S. W. 749, 751. A court for the administration of justice as established by the Constitution or statute. Bradley v. Town of Bloomfield, 85 N.J.Law, 506, 89 A. 1009.

Court of limited jurisdiction. When a court of general jurisdiction proceeds under a special statute, it is a "court of limited jurisdiction" for the purpose of that proceeding, and its jurisdiction must affirmatively appear. Osage Oil & Refining Co. v. Interstate Pipe Co., 124 Okl. 7, 253 P. 66, 71.

De facto court. One established, organized, and exercising its judicial functions under authority of a statute apparently valid, though such statute may be in fact unconstitutional and may be afterwards so adjudged; or a court established and acting under the authority of a *de facto* government. 1 Bl. Judgm. § 173; In re Manning, 139 U.S. 504, 11 S.Ct. 624, 35 L.Ed. 264; Gildemeister V. Lindsay, 212 Mich, 299, 180 N.W. 633, 635.

Full court. A session of a court, which is attended by all the judges or justices composing it.

Spiritual courts. In English law. The ecclesiastical courts, or courts Christian. See 3 Bl. Comm. 61.

COURT-BARON. In English law. A court which, although not one of record, is incident to every manor, and cannot be severed therefrom. It was ordained for the maintenance of the services and duties stipulated for by lords of manors, and for the purpose of determining actions of a personal nature, where the debt or damage was under forty shillings. Wharton; 1 Poll. & Maitl. Hist. E. L. 580.

*Customary court-baron* is one appertaining entirely to copyholders. 3 Bl.Comm. 33.

*Freeholders' court-baron is* one held before the freeholders who owe suit and service to the manor. It is the court-baron proper.

Coke (1st Inst. 58a) speaks of the Court Baron as being of the two natures just indicated. Blackstone, 3 Comm. 33, says that, though in their nature distinct, they are frequently confounded together. Later writers doubt if there were two courts; 1 Poll. & Maitl.Hist.E.L. 580.

COURT CHRISTIAN. The ecclesiastical courts in England are often so called, as distinguished from the civil courts. 1 Bl. Comm. 83; 3 Bl. Comm. 64; 3 Steph. Comm. 430.

COURT FOR CONSIDERATION OF CROWN CASES RESERVED. A court established by St. 11 & 12 Vict. c. 78, composed of such of the judges of the superior courts of Westminster as were able to attend, for the consideration of questions of law reserved by any judge in a court of oyer and terminer, gaol delivery, or quarter sessions, before which a prisoner had been found guilty by verdict. Such question is stated in the form of a special case. Mozley & Whiteley; 4 Steph. Comm. 442. The trial judge was empowered to "state a case" for the opinion of that court. He could not be compelled to do so, and only a question of law could be raised. If the court considered that the point had been wrongly decided at the trial, the conviction would be quashed. By Act of 1907, the Court of Criminal Appeal was created and the Court for Crown Cases Reserved was abolished.

COURT FOR DIVORCE AND MATRIMONIAL CAUSES. This court was established by St. 20 & 21 Vict. c. 85, which transferred to it all jurisdiction then exercisable by any ecclesiastical court in England, in matters matrimonial, and also gave it new powers. The court consisted of the lord chancellor, the three chiefs, and three senior puisne judges of the common-law courts, and the judge ordinary, who together constituted, and still constitute, the "full court." The judge ordinary heard almost all matters in the first instance. By the judicature act, 1873, § 3, the jurisdiction of the court was transferred to the supreme court of judicature. Sweet.

COURT FOR THE CORRECTION OF ERRORS. The style of a court having jurisdiction for review, by appeal or writ of error. The name was formerly used in New York and South Carolina.

COURT FOR THE RELIEF OF INSOLVENT DEBTORS. In English law. A local court which had its • sittings in London only, which received the petitions of insolvent debtors, and decided upon the question of granting a discharge. See 3 Steph. Com. 426; 4 *id.* 287. Abolished by the Bankruptcy Act of 1861.

COURT FOR THE TRIAL OF IMPEACHMENTS. A tribunal empowered to try any officer of government or other person brought to its bar by the process of impeachment. In England, the house of lords constitutes such a court; in the United States, the senate; and in the several states, usually the upper house of the legislative assembly.

COURT-HAND. In old English practice. The peculiar hand in which the records of courts were written from the earliest period down to the reign of George II. Its characteristics were great strength, compactness, and undeviating uniformity; and its use undoubtedly gave to the ancient record its acknowledged superiority over the modern, in tile important quality of durability.

The writing of this hand, with its peculiar abbreviations and contractions, constituted, while it was in use, an art of no little importance, being an indispensable part of the profession of "clerkship," as it was called. Two sizes of it were employed, a large and a small hand; the former, called "great court-hand," being used for initial words or clauses, the *placita* of records, etc. Burrill.

COURT-HOUSE. The building occupied for the public sessions of a court, with its various offices. The building occupied and appropriated according to law for the holding of courts. Board of Sup'rs of Stone County v. O'Neal, 130 Miss. 57, 93 So. 483, 484. Johnson City Buick -Co. v. Johnson, 165 Tenn. 349, 54 S.W.2d 946.

The term may be used of a place temporarily occupied for the sessions of a court, though not the recrular courthouse. Harris v. State, 72 Miss. 960, 18 So. 387, 33 L.R.A. 85; Vigo County v. Stout, 136 Ind. 53, 35 N.E. 683, 22 L. R. A. 398.

The word may be synonymous with "county site" and signify the seat of government. Board of Revenue of Jefferson County v. Huey, 195 Ala. 83, 70 So. 744, 746.

COURT, HUNDRED. See Hundred Court.

COURT-LANDS. Domains or lands kept in the lord's hands to serve his family.

COURT-LEET. The name of an English court of record held once in the year, and not oftener, within a particular hundred, lordship, or manor, before the steward of the leet; being the king's court granted by charter to the lords of those hundreds or manors. Its office was to view the frankpledges,—that is, the freemen within the liberty; to present by jury crimes happening within the jurisdiction; and to punish trivial misdemeanors. It has now, however, for the most part, fallen into total desuetude; though in some manors a court-leet is still periodically held for the transaction of the administrative business of the manor. Mozley & Whitley; Odgers, C. L. 965; Powell, Courts Leet; 1 Reeve, Hist. Eng. Law; Inderwick, King's Peace, 11; 1 Poll. & Maitl. 568; 4 Steph. Com. 306.

COURT-MARTIAL. A military court, convened under authority of government and the Uniform Code of Military Justice, 10 U.S.C.A. § 801 et seq., for trying and punishing offenses committed by members of the armed forces.

Such courts exist and have their jurisdiction by virtue of the military law, the court being constituted and empowered to act in each instance by authority from a commanding officer.

COURT OF ADMIRALTY. A court having jurisdiction of causes arising under the rules of admiralty law. See Admiralty.

High Court of Admiralty. In English law. This was a court which exercised jurisdiction in prize cases, and had general jurisdiction in maritime causes, on the instance side. Its proceedings were usually *in rem,* and its practice and principles derived in large measure from the civil law. The judicature acts of 1873 transferred all the powers and jurisdiction of this tribunal to the probate, divorce, and admiralty division of the high court of justice.

COURT OF ANCIENT DEMESNE. In English law. A court of peculiar constitution, held by a bailiff appointed by the king, in which alone the tenants of the king's demesne could be impleaded. 2 Burrows, 1046; 1 Spence, Eq.Jur. 100; 2 Bl. Comm. 99; 1 Steph. Comm. 224; 1 Poll. & Maitl. 367.

COURT OF APPEAL, HIS MAJESTY'S. The chief appellate tribunal of England. It was established by the judicature acts of 1873 and 1875, and is invested with the jurisdiction formerly exercised by the court of appeal in chancery, the exchequer chamber, the judicial committee of the privy council in admiralty and lunacy appeals, and with general appellate jurisdiction from the high court of justice.

COURT OF APPEALS. In American law. An appellate tribunal which, in Kentucky, Maryland, the District of Columbia, and New York, is the court of last resort. In Virginia and West Virginia, it is known as the "supreme court of appeals"; in Connecticut, the Supreme Court of Errors; in Massachusetts and Maine, the Supreme Judicial Court. In other states the court of last resort is known as the Supreme Court. In Texas the Courts of Civil Appeals are inferior to the supreme court.

The United States is divided into eleven judicial circuits in each of which there is established a court of appeals known as the United States Court of Appeals for the circuit. 28 U.S.C.A. §§ 41, 43.

COURT OF APPEALS IN CASES OF CAPTURE. A court erected by act of congress under the articles of confederation which preceded the adoption of the constitution. It had appellate jurisdiction in prize causes.

COURT OF ARBITRATION OF THE CHAMBER OF COMMERCE. A court of arbitrators, created for the convenience of merchants in the city of New York, by act of the legislature of New York. It decides disputes between members of the chamber of commerce, and between members and outside merchants who voluntarily submit themselves to the jurisdiction of the court.

COURT OF ARCHDEACON. The most inferior of the English ecclesiastical courts, from which an appeal generally lies to that of the bishop (i. e., to the Consistory Court). 3 Bl. Comm. 64; 1 Holdsw. Hist. E. L. 369,

COURT OF ASSISTANTS. A court in Massachusetts organized in 1630, consisting of the governor, deputy governor and assistants. It exercised the whole power both legislative and judicial of the colony and an extensive chancery jurisdiction as well. S. D. Wilson in 18 Am.L.Rev. 226.

COURT OF ATTACHMENTS. The lowest of the three courts held in the forests. It has fallen into total disuse.

It was held before the verderers of the forest once in every forty days, to view the attachments by the foresters for offences against the vert and the venison. It had cognizance only of small trespasses. Larger ones were enrolled and heard by the Justices in Eyre. 1 Holdsw. Hist.E.L. 343.

COURT OF AUDIENCE. An ecclesiastical court, in which the primates once exercised in person a considerable part of their jurisdiction. Such courts seem to be now obsolete, or at least to be only used on the rare occurrence of the trial of a bishop. Phillim. Ecc. Law, 1201, 1204; 1 Holdsw. Hist. E. L. 371.

COURT OF AUGMENTATION. An English court created in the time of Henry VIII (27 Hen. VIII, c. 27), with jurisdiction over the property and revenue of certain religious foundations, which had been made over to the king by act of parliament, and over suits relating to the same.

It was called "The Court of the Augmentations of the Revenues of the King's Crown" (from the *augmentation* of the revenues of the crown derived from the suppression of the monasteries), and was dissolved in the reign of Queen Mary, but the Office of Augmentation remained long after; the records of the court are now at the Public Record Office. Cowell.

COURT OF BANKRUPTCY. An English court of record, having original and appellate jurisdiction in matters of bankruptcy, and invested with both legal and equitable powers for that purpose. The Bankrupt Law Consolidation Act, 1849. By the judicature acts, 1873 and 1875, the court of bankruptcy was consolidated into the supreme court of judicature.

In the United States, the Bankruptcy Act, § 1. (10), 11 U.S.C.A. § 1(10), as amended, provides that " 'courts of bankruptcy' shall include the district courts of the United States and of the Territories and possessions to which this title is or may hereafter be applicable, and the District Court of the United States for the District of Columbia."

COURT OF BROTHERHOOD. An assembly of the mayors or other chief officers of the principal towns of the Cinque Ports in England, originally administering the chief powers of those ports, now almost extinct. Cent. Diet.

COURT OF CHANCERY. A court having the jurisdiction of a chancellor; a court administering equity and proceeding according to the forms and principles of equity. In England, prior to the judicature acts, the style of the court possessing the largest equitable powers and jurisdiction was the "high court of chancery." In some of the United States, the title "court of chancery" is applied to

a court possessing general equity powers, distinct from the courts of common law. Parmeter v. Bourne, 8 Wash. 45, 35 P. 586; Bull v. International Power Co., 84 N.J.Eq. 209, 93 A. 86, 88.

The terms "equity" and "chancery," "court of equity" and "court of chancery," are constantly used as synonymous in the United States. It is presumed that this custom arises from the circumstance that the equity jurisdiction which is exercised by the courts of the various states is assimilated to that possessed by the English courts of chancery. Indeed, in some of the states it is made identical therewith by statute, so far as conformable to our institutions. Wagner v. Armstrong, 93 Ohio St. 443, 113 N.E. 397, 401.

COURT OF CHIVALRY. In English law. The name of a court anciently held as a court of honor merely, before the earl-marshal, and as a criminal court before the lord high constable, jointly with the earl-marshal. (But it is also said that this court was held by the constable, and after that office reverted to the crown in the time of Henry VIII., by the earl-marshal. Davis, Mil. Law 13.) 3 Bl.Comm. 68; 4 Broom & H. Comm. 360, note; 3 Bl. Comm. 103; 3 Steph. Comm. 335, note *l;* 7 Mod. 137.

It had jurisdiction *as* to contracts and other matters. touching deeds of arms or war, as well as pleas of life or member. It also corrected encroachments in matters of coat-armor, precedency, and other distinctions of families. It is now grown entirely out of use, on account of the feebleness of *its* jurisdiction and want of power to enforce its judgments, as it could neither fine nor imprison, not being a court of record.

COURT OF CLAIMS. One of the courts of the United States, established in 1855. U. S. v. Klein, 13 Wall., U.S., 128, 144, 20 L.Ed. 519. It consists of a chief justice and four associates, and holds one annual session. It is located at Washington. Its jurisdiction extends to all claims against the United States arising out of any contract with the government or based on an act of congress or regulation of the executive, and all claims referred to it by either house of congress, as well as to claims for exoneration by a disbursing officer. Its judgments are, in certain cases, reviewable by the United States supreme court. It has no equity powers. Its decisions are reported and published.

This name *is* also given, in some of the states, either to a special court or to the ordinary county court sitting "as a court of claims," having the special duty of auditing and ascertaining the claims against the county and expenses incurred by it, and providing for their payment by appropriations out of the county levy or annual tax. Merlweather v. Muhlenburg County Court, 120 U.S. 354, 7 S.Ct. 563, 30 L.Ed. 653.

COURT OF COMMISSIONERS OF SEWERS. The name of certain English courts created by commission under the great seal pursuant to the statute of sewers (23 Hen. VIII. c. 5).

COURT OF COMMON PLEAS. In English law. One of the four superior courts at Westminster, which existed up to the passing of the judicature acts. It was also styled the "Common Bench." It was one of the courts derived from the breaking up of the *aula regis,* and had exclusive jurisdiction of all real actions and of *communia placita,* or common pleas, i. *e.,* between subject and subject. It was presided over by a chief justice with four puisne judges (later five, by virtue of 31 & 32 Vict. c. 125, § 11, subsec. 8). Appeals lay anciently to the king's bench, but afterwards to the exchequer chamber. See 3 Bl.Comm. 37, et seq. Its jurisdiction was altogether confined to civil matters, having no cognizance in criminal cases, and was concurrent with that of the queen's bench and exchequer in personal actions and ejectment. Wharton.

In American law. The name sometimes given to a court of original and general jurisdiction for the trial of issues of fact and law according to the principles of the common law. Moore v. Barry, 30 S.C. 530, 9 S.E. 589, 4 L.R.A. 294.

COURT OF COMMON PLEAS FOR THE CITY AND COUNTY OF NEW YORK. The oldest court in the state of New York, no longer in existence.

COURT OF CONCILIATION. A court which proposes terms of adjustment, so as to avoid litigation. Kashefsky v. Futernick, 153 Misc. 733, 276 N.Y.S. 253.

COURT OF CONSCIENCE. The same as courts of request, *(q. v.).* This name is also frequently applied to the courts of equity or of chancery, not as a name but as a description. Harper v. Clayton, 84 Md. 346, 35 A. 1083, 35 L.R.A. 211. And see Conscience.

COURT OF CONVOCATION. In English ecclesiastical law. A court, or assembly, comprising all the high officials of each province and representatives of the minor clergy. It is in the nature of an ecclesiastical parliament; and, so far as its judicial functions extend, it has jurisdiction of cases of heresy, schism, and other purely ecclesiastical matters. An appeal lies to the king in council. 2 & 3 Will. IV. c. 92; Cowell; Bac. Abr. *Ecclesiastical Courts,* A, 1; 1 Bla. Comm. 279; 2 Steph. Com. 525, 668; 2 Burn, Eccl. Law, 18. Convocation exercises no jurisdiction at the present day. 1 Holdsw. Hist. E. L. 373.

COURT OF COUNTY COMMISSIONERS. In some states, a court of record in each county. Thus, in Alabama, it is composed of the judge of probate, as principal judge, and four commissioners, who are elected at the times prescribed by law, and hold office for four years.

COURT OF CUSTOMS AND PATENT APPEALS. The title given by Act Mar. 2, 1929, c. 488, § 1, 45 Stat. 1475, to a court of the United States created by Act Aug. 5, 1909, c. 6, § 28, 36 Stat. 91, 105, and then known as the Court of Customs Appeals, consisting of a presiding judge and four associate judges. In patent and trade-mark cases it has the appellate jurisdiction which prior to April 1, 1929, was vested in the Court of Appeals of the District of Columbia. Act Mar. 2, 1929, c. 488, § 2 (a, *d),* 45 Stat. 1476. As to its jurisdiction over appeals from the "Customs Court," see that title.

COURT OF DELEGATES. An English tribunal composed of delegates appointed by royal commission, and formerly the great court of appeal in all ecclesiastical causes. The powers of the

court were, by 2 & 3 Wm. IV. c. 92, transferred to the privy council. Brown; 3 Bl. Comm. 66; 1 Holdsw. Hist. E. L. 373.

A commission of review was formerly granted, in extraordinary cases, to revise a sentence of the court of delegates, when that court had apparently been led into material error.

COURT OF EQUITY. A court which has jurisdiction in equity, which administers justice and decides controversies in accordance with the rules, principles, and precedents of equity, and which follows the forms and procedure of chancery; as distinguished from a court having the jurisdiction, rules, principles, and practice of the common law. Thomas v. Phillips, 4 Smedes & M., Miss., 423.

COURT OF ERROR. An expression applied es pecially to the court of exchequer chamber and the house of lords, as taking cognizance of *error* brought. Mozley & Whitley; 3 Steph. Comm. 333. It is applied in some of the United States to the court of last resort in the state; and in its most general sense denotes any court having power to review the decisions of lower courts on appeal, error, *certiorari,* or other process. See Court of Appeals.

COURT OF ERRORS AND APPEALS. The court of last resort in the state of New Jersey is so named. Formerly, the same title was given to the highest court of appeal in New York.

COURT OF EXCHEQUER. In English law. A very ancient court of record, set up by William the Conqueror as a part of the *aula regis,* and afterwards one of the four superior courts at Westminster. It was, however, inferior in rank to both the king's bench and the common pleas. It was presided over by a chief baron and four puisne barons. It was originally the king's treasury, and was charged with keeping the king's accounts and collecting the royal revenues. But pleas between subject and subject were anciently heard there, until this was forbidden by the *Articula super Chartas,* (1290,) after which its jurisdiction as a court only extended to revenue cases arising out of the non-payment or withholding of debts to the crown. But the privilege of suing and being sued in this court was extended to the king's accountants, and later, by the use of a convenient fiction to the effect that the plaintiff was the king's debtor or accountant, the court was thrown open to all suitors in personal actions. The exchequer had formerly both an equity side and a common-law side, but its equity jurisdiction was taken away by the statute 5 Vict. c. 5, (1842,) and transferred to the court of chancery. The judicature act (1873) transferred the business and jurisdiction of this court to the "Exchequer Division" of the "High Court of Justice."

In Scotch law. A court which formerly had jurisdiction of matters of revenue, and a limited jurisdiction over cases between the crown and its vassals where no questions of title were involved.

COURT OF EXCHEQUER CHAMBER. The name of a former English court of appeal, intermediate between the superior courts of common law and the house of lords. When sitting as a court of appeal from any one of the three superior courts of common law, it was composed of judges of the other two courts. 3 Bl.Comm. 56, 57; 3 Steph.Comm. 333, 356. By the judicature act (1873) the jurisdiction of this court is transferred to the court of appeal.

COURT OF FACULTIES. A tribunal of the archbishop in England.

It does not hold pleas in any suits, but creates rights to pews, monuments, and other mortuary matters. It had also various other powers under 25 Hen. VIII. *c.* 2L Co. 4th Inst. 337; 2 Chit.Gen.Pr. 507.

COURT OF FIRST INSTANCE. A court of primary jurisdiction. Courts of this title may be found in the jurisprudence of the Philippine Islands. 15 C.J. 688.

COURT OF GENERAL QUARTER SESSIONS OF THE PEACE. In American law. A court of criminal jurisdiction in New Jersey.

In English law. A court of criminal jurisdiction, in England, held in each county once in every quarter of a year, but in the county of Middlesex twice a month. 4 Steph. Comm. 317-320. When held at other times than quarterly, the sessions are called "general sessions of the peace." See 2 Odgers, C.L. 966.

COURT OF GENERAL SESSIONS. The name given in some states to a court of general original jurisdiction in criminal cases.

COURT OF GREAT SESSIONS IN WALES. A court formerly held in Wales; abolished by 11 Geo. IV. and 1 Wm. IV. c. 70, and the Welsh judicature incorporated with that of England. 3 Steph. Comm. 317, note; 3 Bla. Comm. 77.

COURT OF GUESTLING. An assembly of the members of the Court of Brotherhood *(supra)* together with other representatives of the corporate members of the Cinque Ports, invited to sit with the mayors of the seven principal towns. Cent. Dict.

COURT OF HIGH COMMISSION. In English law. An ecclesiastical court of formidable jurisdiction, for the vindication of the peace and dignity of the church, by reforming, ordering, and correcting the ecclesiastical state and persons, and all manner of errors, heresies, schisms, abuses, offenses, contempts, and enormities. 3 Bl. Comm. 67. It was erected by St. 1 Eliz. c. 1, and abolished by 16 Car. I, c. 11. 1 Holdsw. Hist. E. L. 375.

COURT OF HONOR. A court having jurisdiction to hear and redress injuries or affronts to a man's honor or personal dignity, of a nature not cognizable by the ordinary courts of law, or encroachments upon his rights in respect to heraldry, coat-armor, right of precedence, and the like. It was one of the functions of the Court of Chivalry *(q.* v.) in England to sit and act as a court of honor. 3 Bl. Comm. 104.

The name is also given in some European countries to a tribunal of army officers (more or less distinctly recognized by law as a "court") convened for the purpose of inquiring into complaints affecting the honor of brother officers and punishing derelictions from the code of honor and deciding on the causes and occasions for fighting duels, in which officers are concerned, and the manner of conducting them.

COURT OF HUSTINGS. In English law. The county court of London, held before the mayor, recorder, and sheriff, but of which the recorder, is, in effect, the sole judge. No actions can be brought in this court that are merely personal. 3 Steph.Comm. 293, n.; 449, note 1; 3 Bla.Comm. 80, n.; Madox, Hist. Exch. c. 20; Co. 2d Inst. 327. Since the abolition of all real and mixed actions except ejectment, the jurisdiction of this court has fallen into comparative desuetude. Pulling on Cust. Lond.

In American Law. A local court in some parts of Virginia. Smith v. Commonwealth, 6 Grat. 696.

COURT OF INQUIRY. In English law. A court sometimes appointed by the crown to ascertain whether it be proper to resort to extreme measures against a person charged before a court-martial. 2 Steph.Comm. 590; 1 Coler.Bla.Comm. 418, n.; 2 Brod. & B. 130. Also a court for hearing the complaints of private soldiers. Moz. & W. Diet.; Simmons, Cts.Mart. § 341.

In American law. Formerly, *a* court constituted by authority of the articles of war, invested with the power to examine into the nature of any transaction of, or accusation or imputation against, any officer or soldier, when demanded by him. Rev.St. § 1342, arts. 115, 116. Repealed by Act June 4, 1920, c. 227, § 4, 41 Stat. 812.

They were not strictly courts, having no power to try and determine guilt or innocence. They were rather agencies created by statute to investigate facts and report thereon. They could not compel the attendance of witnesses nor require them to testify. Davis, Mil. Law 220.

COURT OF JUSTICE SEAT. In English law. The principal of the forest courts. Called also Court of the Chief Justice in Eyre *(q. v.).'*

COURT OF JUSTICIARY. A Scotch court of general criminal jurisdiction of all offenses committed in any part of Scotland, both to try causes and to review decisions of inferior criminal courts. It is composed of five lords of session with the lord president or justice-clerk as president. It also has appellate jurisdiction in civil causes involving small amounts. An appeal lies to the house of lords.

COURT OF KING'S BENCH. In English law. The supreme court of common law in the kingdom, now merged in the high court of justice under the judicature act of 1873, § 16.

It was one of the successors of the *curia regis* and received its name, it is said, because the king formerly sat in it in person. During the reign of a queen it was called the Queen's Bench, and during Cromwell's Protectorate it was called the Upper Bench.

COURT OF LAW. In a wide sense, any duly constituted tribunal administering the laws of the state or nation; in a narrower sense, a court proceeding according to the course of the common law and governed by its rules and principles, as contrasted with a "court of equity."

COURT OF LODEMANAGE. An ancient court of the Cinque Ports, having jurisdiction in maritime matters, and particularly over pilots (lodemen).

COURT OF MAGISTRATES AND FREEHOLDERS. In American law. The name of a court formerly established in South Carolina for the trial of slaves and free persons of color for criminal offenses.

COURT OF MARSHALSEA. In English law, the court or seat of the marshal. A court originally held before the steward and marshal of the king's house, instituted to administer justice between the king's domestic servants. It had jurisdiction of all trespasses committed within the verge of the king's court, where one of the parties was of the royal household; and of all debts and contracts, when both parties were of that establishment. It was abolished by 12 & 13 Viet. c. 101, § 13. Mozley & Whitley.

COURT OF NISI PRIUS. In American law. Though this term is frequently used as a general designation of any court exercising general, orig.. inal jurisdiction in civil cases, (being used interchangeably with "trial-court,") it belonged as *a* legal title only to a court which formerly existed in the city and county of Philadelphia, and which was presided over by one of the judges of the supreme court of Pennsylvania. This court was abolished by the constitution of 1874. See Courts of Assize and Nisi Prius.

COURT OF ORDINARY. In some of the United States *(e. g.,* Georgia) the name given to the probate or surrogate's court, or the court having the usual jurisdiction in respect to the proving of wills and the administration of decedents' estates. Veach v. Rice, 131 U.S. 293, 9 S.Ct. 730, 33 L.Ed. 163. Such a court formerly existed in New Jersey, South Carolina, and Texas. 2 Kent 409.

COURT OF ORPHANS. In English law. The court of the lord mayor and aldermen of London, which has the care of those orphans whose parent died in London and was free of the city. It is now said to be fallen into disuse. 2 Steph. Comm. 313; Pull. Cust. Lond. 196, *Orphans' Court.*

In American law. In Pennsylvania (and perhaps some other states) the name "orphans' court" is applied to that species of tribunal which is elsewhere known as the "probate court" or "surrogate's court."

COURT OF OYER AND TERMINER. In English law. A court for the trial of cases of treason and felony. The commissioners of assise and *nisi prius* are judges selected by the king and appointed and authorized under the great seal, including usually two of the judges at Westminster, and sent out twice a year into most of the counties of England, for the trial (with a jury of the county) of causes then depending at Westminster,

both civil and criminal. They sit by virtue of several commissions, each of which, in reality, constitutes them a separate and distinct court. The commission of *oyer and terminer* gives them authority for- the trial of treasons and felonies; that of *general gaol delivery* empowers them to try every prisoner then in gaol for ,whatever offense; so that, altogether, they possess full criminal jurisdiction.

In American law. This name is generally used (sometimes, with additions) as the title, or part of the title, of a state court of criminal jurisdiction, or of the criminal branch of a court of general jurisdiction, being commonly applied to such courts as may try *felonies,* or the higher grades of crime. Such courts exist in Delaware and Pennsylvania. They were abolished in New York and New Jersey in 1895.

COURT OF OYER AND TERMiNER AND ERAL GAOL (or JAIL) DELIVERY, In American law. A court of criminal juriftd.iCtiOn in the state of Pennsylvania. It is held ta the same time with the court of quarter sessions, as a general rule, and by the same judges. Const.Pa. art. 5, 1 1; 17 P.S. §§ 371, 391, 471.

In English law. A tribunal for the examination and trial of criminals. 3 Steph. Comm. 352.

COURT OF PALACE AT WESTMINSTER. This court had jurisdiction of personal actions arising within twelve miles of the palace at Whitehall. Abolished by 12 & 13 Vict. c. 101, 3 Steph. Comm. 317, note. See Court of the Steward and Marshal.

COURT OF PASSAGE. An inferior court, possessing a very ancient jurisdiction over causes of action arising within the borough of Liverpool. It appears to have been also called the "Borough. Court of Liverpool." It has the same jurisdiction in admiralty matters as the Lancashire county court. Rosc. Adm. 75.

COURT OF PECULIARS. A spiritual court in England, being a branch of, and annexed to, the Court of Arches. It has a jurisdiction over all those parishes dispersed through the province of Canterbury, in the midst of other dioceses, which are exempt from the ordinary's jurisdiction, and subject to the metropolitan only. All ecclesiastical causes arising within these *peculiar* or exempt jurisdictions are originally cognizable by this court, from which an appeal lies to the Court of Arches. 3 Steph. Comm. 431; 4 Reeve, Eng. Law, 104. Most of such courts have been abolished by legislation. 1 Holdsw. Hist. Eng. Law 352. See, also, Arches Court.

COURT OF PIEPOUDRE. (Also spelled Pipowder, Pie Powder, Py-Powder, Piedpoudre, etc.) The lowest (and most expeditious) of the courts of justice known to the older law of England. It is supposed (by Cowell and Blount) to have been so called from the dusty feet of the suitors. For another conjecture as to the origin of the name, see Co. 4th Inst. 472. It was a court of record incident to every fair and market, was held by the steward, and had jurisdiction to administer justice for all commercial injuries and minor offenses done in that same fair or market, (not a preceding one.) Inderwick, King's Peace 105. An appeal lay to the courts at Westminster. This court long ago fell into disuse. 3 Bl. Comm. 32; Barrington, Stat. 337; 3 Steph. Comm. 317, n.; Skene, *de verb. sig. Pede pulverosus;* Bracton 334; 22 L.Q.R. 244; 1 Holdsw. Hist. E. L. 309. See, however, Odgers, C. L. 1021,

COURT OF PLEAS. A court of the county palatine of Durham, having a local common-law jurisdiction. It was abolished by the judicature act, which transferred its jurisdiction to the high court. Jud.Act 1873, § 16; 3 Bl.Comm. 79.

COURT OF POLICIES OF ASSURANCE. A court established by statute 43 Eliz. c. 12, to determine in a summary way all causes between merchants, concerning policies of insurance, Crabb, Eng. Law, 503. The court was formally abolished by stat. 26 & 27 Vict. c. 125. 3 Bl.Comm, 74; 3 Steph. Comm. 317, n.

COURT OF PRIVATE LAND CLAIMS. A federal court created by act of Congress in 1891 (26 Stat. 854), to hear and determine claims by private parties to lands within the public domain, where such claims originated under Spanish or Mexican grants, and had not already been confirmed by Congress or otherwise adjudicated. The existence and authority of this court were to cease and determine at the end of the year 1895.

COURT OF PROBATE. In English *law.* The name of a court established in 1857, under the probate act of that year, (20 & 21 Viet, c. 77,) to be held in London, to which court was transferred the testamentary jurisdiction of the ecclesiastical courts. 2 Steph. Comm. 192. By the judicature acts, this court is merged in the high court of justice.

In American law. A court having jurisdiction over the probate of wills, the grant of administration, and the supervision of the management and settlement of the estates of decedents, including the collection of assets, the allowance of claims, and the distribution of the estate. In some states the probate courts also have jurisdiction of the estates of minors, including the ap pointment of guardians and the settlement of their accounts, and of the estates of lunatics, habitual drunkards, and spendthrifts. Pons v. Pons, 132 La. 370, 61 So. 406, 407. And in some states these courts possess a limited jurisdiction in civil, and criminal cases. They are also called in some jurisdictions "orphans' courts" and "surrogate's courts."

COURT OF PYPOWDER, PY-POWDER, or PY-POWDERS. See Court of Piepoudre.,

COURT OF QUARTER SESSIONS OF THE PEACE. In American law. A court of criminal jurisdiction in the state of Pennsylvania, having power to try misdemeanors, and exercising cer-

tain functions of an administrative nature. There is one such court in each county of the state. Its sessions are, in general, held at the same time and by the same judges as the *court of oyer and terminer and general jail delivery.* Const.Pa. art. 5, § 1; 17 P.S. §§ 331, 361.

COURT OF QUEEN'S BENCH. See Court of King's Bench.

COURT OF RECORD. See Court, *supra.*

COURT OF REGARD. In English law. One of the forest courts, in England, held every third year, for the lawing or expeditation of dogs, to prevent them from running after deer. It is now obsolete. 3 Steph. Comm. 440; 3 Bl. Comm. 71, 72.

COURT OF SESSION. The name of the highest court of civil jurisdiction in Scotland. It was composed of fifteen judges, now of thirteen. It sits in two divisions. The lord president and three ordinary lords form the first division; the lord justice clerk and three other ordinary lords form the second division. There are five permanent lords ordinary attached equally to both divisions; the last appointed of whom officiates on the bills, i. *e.,* petitions preferred to the court during the session, and performs the other duties of junior lord ordinary. The chambers of the parliament house in which the first and second divisions hold their sittings are called the "inner house;" those in which the lords ordinary sit as single judges to hear motions and causes are collectively called the "outer house." The nomination and appointment of the judges is in the crown. Wharton.

COURT OF SESSIONS. Courts of criminal jurisdiction existing in California, New York, and one or two other of the United States.

COURT OF SHEPWAY. A court held before the lord warden of the Cinque Ports. A writ of error lay from the mayor and jurats of each port to the lord warden in this court, and thence to the queen's bench. The civil jurisdiction of the Cinque Ports is abolished by 18 & 19 Vict. c. 48.

COURT OF SPECIAL SESSIONS. A generic term, applicable to those courts which have no stated terms and are not continuous, but which are organized only for the trial of each particular case and become functus officio when judgment is rendered therein. People v. Wagner, 45 N.Y.S.2d 314, 316.

COURT OF STANNARIES. In English law. A court established in Devonshire and Cornwall, for the administration of justice among the miners and tinners, that they might not be drawn away from their business to attend suits in distant courts. The stannary court is a court of record, with a special jurisdiction. 3 Bl. Comm. 79.

COURT OF STAR CHAMBER. This was an English court of very ancient origin, but new-modeled. by St. 3 Hen. VII. c. 1, and 21 Hen. VIII. c. 20, consisting of divers lords, spiritual and temporal, being privy councillors, together with two judges of the courts of common law, without the intervention of any jury. The jurisdiction extended legally over riots, perjury, misbehavior of sheriffs, and other misdemeanors contrary to the laws of the land; yet it was afterwards stretched to the asserting of all proclamations and orders of state, to the vindicating of illegal commissions and grants of monopolies; holding for honorable that which it pleased, and for just that which it profited, and becoming both a court of law to determine civil rights and a court of revenue to enrich the treasury. It was finally abolished by St. 16 Car. I, c. 10, to the general satisfaction of the whole nation. Brown.

COURT OF SURVEY. A court for the hearing of appeals by owners or masters of ships, from orders for the detention of unsafe ships, made by the English board of trade, under the merchant shipping act, 1876, § 6.

COURT OF SWEINMOTE (spelled, also, *Swainmote, Swain-gemote;* Saxon, *swang,* an attendant, a freeholder, and *mote* or *gemote,* a meeting). One of the old forest courts, held before the verderers, as judges, by the steward, thrice in every year,—the sweins or freeholders within the forest composing the jury. This court had jurisdiction to inquire into grievances and oppressions committed by the officers of the forest, and also to receive and try presentments certified from the court of attachments, certifying the cause, in turn,. under the seals of the jury, in case of conviction, to the court of justice seat for the rendition of judgment. Cowell; 3 Bla. Corn. 71, 72; 3 Steph. Corn. 317, n. See Inderwick, King's Peace 150; Forest Laws.

COURT OF THE CHIEF JUSTICE IN EYRE. The highest of the courts of the forest, held every three years, by the chief justice, to inquire of purprestures or encroachments, assarts, or cultivation of forest land, claims to franchises, parks, warrens, and vineyards in the forest, as well as claims of the hundred, claims to the goods of felons found in the forest, and any other civil questions that might arise within the forest limits. But it had no criminal jurisdiction, except of offenses against the forest laws. It was called also the court of justice seat. Inderwick, King's Peace. Since the Restoration the forest laws have fallen into disuse. The office was abolished in 1817.

COURT OF THE CLERK OF THE MARKET. An English court of inferior jurisdiction held in every fair or market for the punishment of misdemeanors committed therein. The jurisdiction over weights and measures formerly exercised was taken away by stat. 5 & 6 Will. IV. c. 637 9 M. & W. 747. 4 Steph. Comm. 323.

COURT OF THE CORONER. In English law. A court of record, to inquire, when any one dies in prison, or comes to a violent or sudden death, by what manner he came to his end. 4 Steph. Comm. 323; 4 Bl. Comm. 274. Now generally known as an inquest. See Coroner.

COURT OF THE COUNTIES PALATINE. In English law. A species of private court which formerly appertained to the counties palatine of Lancaster and Durham. 1 Holdsw. Hist. E. L. 47; 1 Steph. Hist. C. L. 138; Coke, 4 Inst. 239; 1 Harg. L. Tr. 378.

COURT OF THE DUCHY OF LANCASTER. A court of special jurisdiction, held before the chancellor of the duchy or his deputy, concerning all matters of equity relating to lands holden of the king in right of the duchy of Lancaster. 3 Bl. Comm. 78.

COURT OF THE EARL MARSHAL. In the reign of William the Conqueror the marshal was next in rank to the constable, in command of the army. When the constable's office ceased, his duties devolved upon the earl marshal. The military Court of the Constable came to be known as the Marshal's Court, or, in its modern form, Court-Martial. Aside from its criminal jurisdiction, it had much to do with questions relating to fiefs and military tenures, though not to property rights involved therein. Davis, Mil. Laws of U. S. 14. See Hale, Hist. C. L. 36; Grose, Mil. Antiq. See Court of Chivalry; Courts-Martial; Constable of England.

COURT OF THE LORD HIGH ADMIRAL. In the earlier part of the 14th century, the Admiral possessed a disciplinary jurisdiction over his fleet. After 1340 it is reasonable to suppose that the Admiral could hold an independent court and administer justice in piracy and other maritime cases. There were at first several admirals and several courts. From the early 15th century there was one Lord High Admiral and one Court of Admiralty. 1 Holdsw. Hist. E. L. 313.

COURT OF THE LORD HIGH STEWARD. In English law. A court instituted for the trial, during the recess of parliament, of peers indicted for treason or felony, or for misprision of either. This court is not a permanent body, but is created in modern times, when occasion requires, and for the time being, only; and the lord high steward, so constituted, with such of the temporal lords as may take the proper oath, and act, constitute the court.

All peers who have a right to sit and vote in Parliament must be summoned. They are the sole judges of fact, and the majority, which must consist of twelve at least, decides. The Lord High Steward has a vote, and is judge of all matters of law.

COURT OF THE LORD HIGH STEWARD OF THE UNIVERSITIES. In English law. A court constituted for the trial of scholars or privileged persons connected with the university at Oxford or Cambridge who are indicted for treason, felony, or mayhem. 3 Bla. Comm. 83; 4 *id.* 277; 1 Steph. Comm. 67; 3 *id.* 341; 4 *id.* 261.

COURT OF THE OFFICIAL PRINCIPAL. This court, the Court of the "Official Principal" of the Archbishop of Canterbury, is more commonly called the Arches Court, or Court of the Arches. See Arches Court.

COURT OF THE STEWARD AND MARSHAL. A high court, formerly held in England by the steward and marshal of the king's household, having jurisdiction of all actions against the king's peace within the bounds of the household for twelve miles, which circuit was called the "verge." Crabb, Eng. Law, 185. It had also jurisdiction of actions of debt and covenant, where both the parties were of the household. 2 Reeve, Eng.Law, 235, 247. This court was created by Charles I., and abolished in 1849. It was held in the borough of Southwark, and was called also the "palace court," having jurisdiction of all personal actions arising within twelve miles of the royal palace of Whitehall, exclusive of London.

COURT OF THE STEWARD OF THE KING'S HOUSEHOLD. In English law. A court which had jurisdiction of all cases of treason, misprision of treason, murder, manslaughter, bloodshed, and other malicious strikings whereby blood is shed, occurring in or within the limits of any of the palaces or houses of the king, or any other house where the royal person is abiding. It was created by statute 33 Hen. VIII, c. 12, but long ago fell into disuse. 4 Bl. Comm. 276, 277, and notes.

COURT OF WARDS AND LIVERIES. A court of record, established in England in the reign of Henry VIII. For the survey and management of the valuable fruits of tenure, a court of record was created by St. 32 Hen. VIII. c. 46, called the "Court of the King's Wards." To this was annexed, by St. 33 Hen. VIII, c. 22, the "Court of Liveries;" so that it then became the "Court of Wards and Liveries." 4 Reeve, Eng. Law, 258. This court was not only for the management of "wards," properly so called, but also of idiots and natural fools in the king's custody, and for licenses to be granted to the king's widows to marry, and fines to be made for marrying without his license. Id. 259. It was abolished by St. 12 Car. II. c. 24. Crabb, Eng. Law, 468; 4 Reeve, Hist. E. L. 259; Crabb, Hist. E. L. 468; 1 Steph. Com. 183; 4 id. 40; 2 Bla. Corn. 68; 3 id. 258.

COURT ROLLS. The rolls of a manor, containing all acts relating thereto. While belonging to the lord of the manor, they are not in the nature of public books for the benefit of the tenant.

COURTS OF APPEALS. A system of courts of the United States (one in each circuit) created by act of congress, composed of three or more judges (provision being made also for the allotment of the justices of the supreme court among the circuits), and having appellate jurisdiction as defined by statute. 28 U.S.C.A. §§ 41-48, 1291-1294.

Court of Appeals of the District of Columbia was held to be Circuit Court of Appeals, Swift & Co. v. U. S., App.D.C., 276 U. S. 311, 48 S.Ct. 311, 313, 72 L. Ed. 587.

COURTS OF ASSIZE AND NISI PRIUS. Courts in England composed of two or more commissioners, called "judges of assize," (or of "assize and *nisi prius,")* who are twice in every year sent by the king's special commission, on circuits all round the kingdom, to try, by a jury of the respective counties, the truth of such matters of

fact as are there under dispute in the courts of Westminster Hall. 3 Steph. Comm. 421, 422; 3 Bi. Comm. 57; 2 Odger, Corn. Law, 985.

COURTS OF CINQUE PORTS. In English law. Courts of limited local jurisdiction formerly held before the mayor and jurats (aldermen) of the Cinque Ports. Their jurisdiction was not affected by the Judicature Act of 1873. 1 Holdsw. Hist. E. L. 305; 3 Bla. Comm. 79; 2 Steph. Comm. 499.

COURTS OF THE FOREST. Courts held for the enforcement of the forest laws. Inderwick, King's Peace. See Forest Courts.

COURTS OF THE FRANCHISES. Jurisdictions in the early Norman period which rested upon royal grants—often assumed. Edward I., in 1274, sent out commissioners to enquire by what warrant different landowners were exercising their *Jura regalia.* There were many varieties of lesser franchises. Some of these franchises were recognized as existing by the County Courts Acts, 1846–1888. 1 Holdsw. Hist. E. L. 61.

COURTS OF PRINCIPALITY OF WALES. A species of private courts of a limited though extensive jurisdiction, which, upon the thorough reduction of that principality and the settling of its polity in the reign of Henry VIII, were erected all over the country. These courts, however, have been abolished by 1 Wm. IV. c. 70; the principality being now divided into two circuits, which the judges visit in the same manner as they do the circuits in England, for the purpose of disposing of those causes which are ready for trial. Brown.

COURTS OF REQUEST. Inferior courts, in England, having local jurisdiction in claims for small debts, established in various parts of the kingdom by special acts of parliament. They were abolished in 1846, and the modern county courts *(q. v.)* took their place. 3 Steph. Comm. 283, 449; 1 Holdsw. H. E. L. 208; Bac. Abridg.; Select Cases in the Court of Requests (Selden Society, Publ. vol. 12).

COURTS OF THE UNITED STATES comprise the following: The senate of the United States, sitting as a court of impeachment; the supreme court; the courts of appeals; the district courts; the court of claims; the court of customs and patent appeals; the customs court; the tax court of the United States; and provisional courts; courts of territories and outlying possessions.

COURTS OF THE UNIVERSITIES of Oxford and Cambridge have jurisdiction in all personal actions to which any member or servant of the respective university is a party, provided that the cause of action arose within the liberties of the university, and that the member or servant was resident in the university when it arose, and when the action was brought. 3 Steph.Comm. 299; St. 25 & 26 Vict. c. 26, § 12, St. 19 & 20 Vict. c. 17. Each university court also has a criminal jurisdiction in all offenses committed by its members. 4 Steph. Comm. 325.

COURTS OF WESTMINSTER HALL. The superior courts, both of law and equity, were for centuries fixed at Westminster, an ancient palace of the monarchs of England. Formerly, all the superior courts were held before the king's capital justiciary of England, in the *aula regis,* or such of his palaces wherein his royal person resided, and removed with his household from one end of the kingdom to another. This was found to occasion great inconvenience to the suitors to remedy which it was made an article of the great charter of liberties, both of King John and King Henry III., that "common pleas should no longer follow the king's court, but be held in some certain place," in consequence of which they have ever since been held (a few necessary removals in times of the plague excepted) in the palace of Westminster only. The courts of equity also sit. at Westminster, nominally, during term time, although, actually, only during the first day of term, for they generally sit in courts provided for the purpose in, or in the neighborhood of, Lincoln's Inn. Brown.

COURTESY. See Curtesy.

COURTYARD. A corrupted form of "curtilage," signifying a space of land about a dwelling house, which not only might be inclosed, but within which appurtenant buildings and structures might be erected. In re Lafayette Ave. in City of New York, 118 Misc.Rep. 161, 193 N.Y.S. 802, 804.

COUSIN. Kindred in the fourth degree, being the issue (male or female) of the brother or sister of one's father or mother. Harris v. Harris, 97 N. J.Eq. 190, 127 A. 108, 109; In re Hering's Estate, 137 Misc. 867, 244 N.Y.S. 138.

Those who descend from the brother or sister or the father of the person spoken of are called "paternal cousins ;" "maternal cousins" are those who are descended from the brothers or sisters of the mother. Cousins-german are first cousins. Sanderson v. Bayley, 4 Myl. & C. 59.

In . English writs, commissions, and other formal instruments issued by the crown, the word signifies any peer of the degree of an earl. The appellation is as ancient as the reign of Henry IV., who, being related or allied to every earl then in the kingdom, acknowledged that connection in all his letters and public acts ; from which the use has descended to his successors, though the reason has long ago failed. Mozley & Whitley.

First cousins. Cousins-german; the children of, one's uncle or aunt. Sanderson v. Bayley, 4 Mylne & C. 59.

Second cousins. Persons who are related to each other by descending from the same great-grandfather or great-grandmother. The children of one's first cousins are his second cousins. These are sometimes called "first cousins once removed." Slade v. Fooks, 9 Sim. 387; Corporation of Bridgnorth v. Collins, 15 Sim. 541.

Quarter cousin. Properly, a cousin in the fourth degree; but the term has come to express any remote degree of relationship, and even to bear an ironical signification in which it denotes a very trifling degree of intimacy and regard. Often corrupted into "cater" cousin.

COUSINAGE. See Cosinage.

COUSTOM. (Fr. Coutum.) Custom; duty; toll; tribute. 1 Bl. Comm. 314.

COUSTOUMIER. (Otherwise spelled *"Coustumier"* or *"Coutumier.")* In old French law. A collection of customs, unwritten laws, and forms of procedure. Two such volumes are of especial importance in juridical history, viz., the *Grand Coustumier de Normandie,* and the *Coutumier de France* or *Grand Coutumier.*

COUTHUTLAUGH. A person who willingly and knowingly received an outlaw, and cherished or concealed him; for which offense he underwent the same punishment as the outlaw himself. Bract. 128b ; Spelman.

COUVERTURE. In French law. The deposit ("margin") made by the client in the hands of the broker, either of a sum of money or of securities, in order to guaranty the broker for the payment of the securities which he purchases for the client. Arg.Fr.Merc.Law, 555.

COVENABLE. A French word signifying convenient or suitable; as covenably endowed. Anciently written "convenable." Termes de la Ley.

COVENANT.

Practice

The name of a common-law form of action *ex contractu,* which lies for the recovery of damages for breach of a covenant, or contract under seal. Stickney v. Stickney, 21 N.H. 68; Utilities Production Corporation v. Southwestern Natural Gas Co., Del., 1 Terry 401, 11 A.2d 275, 276.

Law of Contracts

An agreement, convention, or promise of two or more parties, by *deed* in writing, signed, sealed, and delivered, by which either of the parties pledges himself to the other that something is either done or shall be done, or stipulates for the truth of certain facts. Commonwealth v. Robinson, 1 Watts, Pa., 160; Kent v. Edmondston, 49 N.C. 529; Schram v. Coyne, C.C.A.Mich., 127 F.2d 205, 209; Sabin v. Hamilton, 2 Ark. 485, 490 (see, however, the later case of Dyer v. Gill, 32 Ark. 410, pointing out that by virtue of statute in Arkansas, the distinction between sealed and unsealed instruments, with reference to contracts between individuals, has been abolished).

An agreement between two or more parties, reduced to writing and executed by a sealing and delivery thereof, whereby some of the parties named therein engage, or one of them engages, with the other, or others, or some of them, therein also named, that some act hath or hath not already been done, or for the performance or non-performance of some specified duty. De Bolle v. Insurance Co., 4 Whart., Pa., 71, 33 Am.Dec. 38.

In common parlance, any agreement, whether under seal or not. 15 C.J. 1209; 7 R.C.L. 1084; Jenkins v. John Taylor Dry Goods Co., 352 Mo. 660, 179 S.W.2d 54, 58.

In effect, this has become the legal meaning in many states, in which private seals have been abolished by statute. For a number of these state statutes, see 66 L.R.A. 686, 687. In those states it is commonly held that the affixing of a seal, when unnecessary to the validity of the instrument, has no effect, and may be disregarded. 24 R.C.L. 689. "Seals are a relic of that period when men, as a rule, could not write," and a covenant may "be created in this state [Georgia] by a writing not under seal." Atlanta, K. & N. Ry. Co. v. McKinney, 124 Ga. 929, 53 S.E. 701, 703, 6 L.R.A.,N.S., 436.

Classification

Covenants may be classified according to several distinct principles of division. According as one or other of these is adopted, they are:

Express or implied. The former being those which are created by the express words of the parties to the deed declaratory of their intention, while implied covenants are those which are inferred by the law from certain words in a deed which imply (though they do not express) them. Express covenants are also called covenants "in deed," as distinguished from covenants "in law." McDonough v. Martin, 88 Ga. 675, 16 S.E. 59, 18 L. R.A. 343; Garstang v. Davenport, 90 Iowa 359, 57 N.W. 876.

Dependent, concurrent, and independent. Covenants are either dependent, concurrent, or mutual and independent. The first depends on the prior performance of some act or condition, and, until the condition is performed, the other party is not liable to an action on his covenant. In the second, mutual acts are to be performed at the same time; and if one party is ready, and offers to perform his part, and the other neglects or refuses to perform his, he who is ready and offers has fulfilled his engagement, and may maintain an action for the default of the other, though it is not certain that either is obliged to do the first act. The third sort is where either party may recover damages from the other for the injuries he may have received by a breach of the covenants in his favor; and it is no excuse for the defendant to allege a breach of the covenants on the part of the plaintiff. Bailey v. White, 3 Ala. 330; Gray v. Smith, C.C.Cal., 76 F. 534; Lowery v. May, 213 Ala. 66, 104 So. 5, 8; Roberts v. Steelman, C.C.A.N.J., 1 F.2d 180, 182..

Mutual and independent covenants are such as do not go to the whole consideration on both sides, but only to a part, and where separate actions lie for breaches on either side to recover damages for the injury sustained *by* breach. Lowery v. May, 213 Ala. 66, 104 So. 5, 8; Big Run Coal Co. v. Employers' Indemnity Co., 163 Ky. 596, 174 S.W. 25, 26.

Covenants are dependent where performance by one party is conditioned on and subject to performance by the other, and in such case the party who seeks performance must show performance or a tender or readiness to perform on his part; but covenants are independent when actual performance of one is not dependent on another, and where, in consequence, the remedy of both sides is by action. Roberts v. Steelman, C.C.A.N.J., 1 F.2d 180, 182.

Principal and auxiliary. The former being those which relate directly to the principal matter of the contract entered into between the parties; while auxiliary covenants are those which do not relate directly to the principal matter of contract between the parties, but to something connected with it.

Inherent and collateral. The former being such as immediately affect the particular property, while the latter affect some property collateral thereto or some matter collateral to the grant or lease. Shep.Touch. 161.

A covenant inherent is one which is conversant about the land, and knit to the estate *in* the land; as, that the thing demised shall be quietly enjoyed, shall be kept in repair, or shall not be aliened. A covenant collateral is one which is conversant about some collateral thing that doth nothing at all, or not so immediately, concern the thing granted; as to pay a sum of money in gross, etc.

Joint or several. The former bind both or all the covenantors together; the latter bind each of them separately. A covenant may be both joint and several at the same time, as regards the covenantors; but, as regards the covenantees, they cannot be joint and several for one and the same cause, (5 Coke, 19a,) but must be either joint or several only. Brown. See Capen v. Barrows, 1 Gray, Mass., 379; In re Slingsby, 5 Coke, 18b.

Covenants are usually joint or several according as the interests of the covenantees are such; but the words of the covenant, where they are unambiguous, will decide, although, where they are ambiguous the nature of the interests as being joint or several is left to decide.

General or specific. The former relate to land generally and place the covenantee in the position of a specialty creditor only; the latter relate to particular lands and give the covenantee a lien thereon. Brown.

Executed or executory. The former being such as relate to an act already performed; while the latter are those whose performance is to be future. Shep.Touch. 161.

Affirmative or negative. The former being those in which the party binds himself to the existence of a present state of facts as represented or to the future performance of some act; while the latter are those in which the covenantor obliges himself *not* to do or perform some act.

Declaratory or obligatory. The former being those which serve to limit or direct uses; while the latter are those which are binding on the party himself. 1 Sid. 27; 1 Keb. 337.

Real and personal. A real covenant is one which binds the heirs of the covenantor and passes to assignees or purchasers; a covenant the obligation of which is so connected with the realty that he who has the latter is either entitled to the benefit of it or is liable to perform it; a covenant which has for its object something annexed to, or inherent in, or connected with, land or other real property, and runs with the land, so that the grantee of the land is invested with it and may sue upon it for a breach happening in his time. 4 Kent, Comm. 470; 2 Bl.Comm. 304; Chapman v. Holmes, 10 N.J.Law, 20; Skinner v. Mitchell, 5 Kan.App. 366, 48 P. 450; Oil Co. v. Hinton, 159 Ind. 398, 64 N.E. 224; Davis v. Lyman, 6 Conn. 249.

In the old books, a covenant real is also defined to be a covenant by which a man binds himself to pass a thing real, as lands or tenements. Termes de la Ley; 3 Bl. Comm. 156; Shep.Touch. 161. A personal covenant, on the other hand, is one which, instead of being a charge upon real estate of the covenantor, only binds himself and his personal representatives in respect to assets. 4 Kent, Comm. 470; Carter v. Denman, 23 N.J.Law, 270; Hadley v. Bernero, 97 Mo.App. 314, 71 S.W. 451. The phrase may also mean a covenant which is personal to the covenantor, that is, one which he must perform in person, and cannot procure another person to perform for him. De Sanno v. Earle, 273 Pa. 265, 117 A. 200, 202; Pearson v. Richards, 106 Or. 78, 211 P. 167, 171. "Real covenants" relate to realty and have for their main object some benefit thereto, inuring to benefit of and becoming binding on subsequent grantees, while "personal covenants" do not run with land. Bank of Hoxie v. Meriwether, 166 Ark. 39, 265 S.W. 642, 645. Very considerable confusion exists among the authorities in the use of the term real covenants. The definition of Blackstone which determines the character of covenants from the insertion or noninsertion of the word "heir" by the covenantor, is pretty generally rejected.

Transitive or intransitive. The former being those personal covenants the duty of performing which passes over to the representatives of the covenantor; while the latter are those the duty of performing which is limited to the covenantee himself, and does not pass over to his representative. Bac.Abr.Cov.

Disjunctive covenants. Those which are for the performance of one or more of several things at the election of the covenantor or covenantee, as the case may be. Platt, Co$^{y}$. 21.

Absolute or conditional. An absolute covenant is one which is not qualified or limited by any condition.

### Other Compound and Descriptive Terms

Continuing covenant. One which indicates or necessarily implies the doing of stipulated acts successively or as often as the occasion may require; as, a covenant to pay rent by installments, to keep the premises in repair or insured, to cultivate land, etc. McGlynn v. Moore, 25 Cal. 395.

Full covenants. As this term is used in American law, it includes the following: The covenants for seisin, for right to convey, against incumbrances, for quiet enjoyment, sometimes for further assurance, and almost always of warranty, this last often taking the place of the covenant for quiet enjoyment, and indeed in many states being the only covenant in practical use. Rawle, Coy. for Title, § 21.

Mutual covenants. A mutual covenant is one where either party may recover damages from the other for the injury he may have received from a breach of the covenants in his favor. Bailey v. White, 3 Ala. 330.

Separate covenant. A several covenant; one which binds the several covenantors each for himself, but not jointly.

Usual covenants. An agreement on the part of a seller of real property to give the usual covenants binds him to insert in the grant covenants of "seisin," "quiet enjoyment," "further assurance," "general warranty," and "against incumbrances." Wilson v. Wood, 17 N.J.Eq. 216, 88 Am.Dec. 231; Drake v. Barton, 18 Minn. 467, Gil. 414.

The result of the authorities appears to be that in a case where the agreement is silent as to the particular covenants to be inserted in the lease, and provides merely for the lease containing "usual covenants," or, which is the same thing, in an open agreement without any reference to the covenants, and there are no special circumstances justifying the introduction of other covenants, the following are the only ones which either party can insist upon, namely; Covenants by the lessee (1) to pay rent; (2) to pay taxes, except such as are expressly payable by the landlord; (3) to keep and deliver up the premises in repair; and (4) to allow the lessor to enter and view the state of repair; and the usual qualified covenant by the lessor for quiet enjoyment by the lessee. 7 Ch.Div. 561.

Specific Covenants

Covenants against incumbrances. A covenant that there are no incumbrances on the land conveyed; a stipulation against all rights to or interests in the land which may subsist in third persons to the diminution of the value of the estate granted. Bank v. Parisette, 68 Ohio St. 450, 67 N.E. 896; Shearer v. Ranger, 22 Pick., Mass:, 447; Matzger v. Arcade Building & Realty Co., 102 Wash. 423, 173 P. 47.

Covenant for further assurance. An undertaking, in the form of a covenant, on the part of the vendor of real estate to do such further acts for the purpose of perfecting the purchaser's title as the latter may reasonably require. This covenant is deemed of great importance, since it relates both to the vendor's title of and to the instrument of conveyance to the vendee, and operates as well to secure the performance of all acts necessary for supplying any defect in the former as to remove all objections to the sufficiency and security of the latter. Platt, Cov.; Rawle, Co$^{y}$. §§ 98, 99. See Sugd.Vend. 500; Armstrong v. Darby, 26 Mo. 520.

Covenant for quiet enjoyment. An assurance against the consequences of a defective title, and of any disturbances thereupon. Platt, Cov. 312; Rawle, Co$^{y}$. 125. Gulf Refining Co. v. Fetschan, C.C.A.Ohio, 130 F.2d 129, 132.

A covenant that the tenant or grantee of an estate shall enjoy the possession of the premises in peace and without disturbance by hostile claimants. Poposkey v. Munkwitz, 68 Wis. 322, 32 N.W. 35, 60 Am.Rep. 858; Stewart v. Drake, 9 N.J.Law, 141; Christy v. Bedell, 10 Kan. App. 435, 61 P. 1095.

Covenants for title. Covenants usually inserted in a conveyance of land, on the part of the grantor, and binding him for the completeness, security, and continuance of the title transferred to the grantee. They comprise "covenants for seisin, for right to convey, against incumbrances, or quiet enjoyment, sometimes for further assurance, and almost always of warranty." Rawle, Cov. § 21.

Covenants in gross. Such as do not run with the land.

Covenant not to sue. A covenant by one who had a right of action at the time of making it against another person, by which he agrees not to sue to enforce such right of action. Pacific States Lumber Co. v. Bargar, C.C.A.Or., 10 F.2d 335, 337; McDonald v. Goddard Grocery Co., 184 Mo.App. 432, 171 S.W. 650, 651,

Covenant of non-claim. A covenant sometimes employed, particularly in the New England states, and in deeds of extinguishment of ground rents in Pennsylvania, that neither the vendor, nor his heirs, nor any other person, etc., shall claim any title in the premises conveyed. Rawle, Co$^{y}$. § 22.

Covenant of right to convey. An assurance by the covenantor that the grantor has sufficient capacity and title to convey the *estate* which he by his deed undertakes to convey.

Covenant of seisin. An assurance to the purchaser that the grantor has the very estate in quantity and quality which he purports to convey. 11 East, 641; Rawle, Co$^{y}$. § 58; Burton v. Price, 105 Fla. 544, 141 So. 728, 729.

It is said that the covenant of seisin is not now in use in England, being embraced in that of a right to convey; but it is used in several of the United States. 2 Washb. Heal Prop. *648.

Covenant of warranty. An assurance by the grantor of an estate that the grantee shall enjoy the same without interruption by virtue of paramount title. King v. Kilbride, 58 Conn. 109, 19 A. 519; Blair v. Morris, 212 Ala. 91, 101 So. 745, 746; Biwer v. Martin, 294 Ill. 488, 128 N.E. 518, 522.

Covenant running with land. A covenant which goes with the land, as being annexed to the estate, and which cannot be separated from the land, and transferred without it. 4 Kent, Comm. 472, note.

A covenant is said to run with the land, when not only the original parties or their representatives, but each successive owner of the land, will be entitled to its benefit, or be liable (as the case may be) to its obligation. 1 Steph. Comm. 455. Or, in other words, it is so called when either the liability to perform it or the right to take advantage cf it passes to the assignee of the land. Tillotson v. Prichard, 60 Vt. 94, 14 A. 302, 6 Am.St.Rep. 95; Spencer's Case, 3 Coke, 31. One which touches and concerns the land itself, so that its benefit or obligation passes with the ownership. Local Federal Savings Loan Ass'n of Oklahoma City v. Eckroat, 186 Okl. 660, 100 P.2d 261, 262.

Covenant running with title. A covenant which goes with the title. Stipulation in a lease granting to lessee the option of renewing it for another specified period was such a covenant. Magnolia Petroleum Co. v. Carter, La.App., 2 So.2d 680, 682.

Covenant to convey. A covenant by which the convenantor agrees to convey to the covenantee a certain estate, under certain circumstances.

Covenant to renew. An executory contract, giving lessee the right to renew on compliance with the terms specified in the renewal clause, if any, or, if none, on giving notice, prior to termination of the lease, of his desire to renew, whereupon the contract becomes executed as to him. Freiheit v. Broch, 98 Conn. 166, 118 A. 828, 830.

Covenant to stand seised. A conveyance adapted to the case where a person seised of land in possession, reversion, or vested remainder, proposes to convey it to his wife, child, or kinsman. In its terms it consists of a covenant by him, in consid-

eration of his natural love and affection, to stand seised of the land to the use of the intended transferee. Before the statute of uses this would merely have raised a use in favor of the convenantee; but by that act this use is converted into the legal estate, and the covenant therefore operates as a conveyance of the land to the covenantee. It is now almost obsolete. 1 Steph.Comm. 532; Williams, Seis. 145; French v. French, 3 N.H. 261; Jackson v. Swart, 20 Johns., N.Y., 85.

COVENANTEE. The party to whom a covenant is made. Shep.Touch. 160.

COVENANTOR. The party who makes a covenant. Shep.Touch. 160.

COVENANTS PERFORMED. In Pennsylvania practice. This is the name of a plea to the action of covenant whereby the defendant, upon informal notice to the plaintiff, may give anything in evidence which he might have pleaded. With the addition of the words "absque hoc" it amounts to a denial of the allegations of the declaration; and the further addition of "with leave," etc., imports an equitable defense, arising out of special circumstances, which the defendant means to offer in evidence. Zents v. Legnard, 70 Pa. 192; Stewart v. Bedell, 79 Pa. 336.

COVENT. A contraction, in the old books, of the word "convent."

COVENTRY ACT. The name given to the statute 22 & 23 Car. II. c. 1, which provided for the punishment of assaults with intent to maim or disfigure a person. It was so named from its being occasioned by an assault on Sir John Coventry in the street as was supposed, for some obnoxious words uttered by him in parliament. 4 Bl.Comm. 207; State v. Cody, 18 Or. 506, 23 P. 891.

COVER, v. In insurance. To protect by means of insurance; sometimes orally pending issuance of policy. Barrette v. Casualty Co. of America, 79 N.H. 59, 104 A. 126, 127; Michigan Idaho Lumber Co. v. Northern Fire & Marine Ins. Co., 35 N.D. 244, 160 N.W. 130, 136; Muntz v. Travelers Mut. Casualty Co., 229 Iowa 1015, 295 N.W. 837, 841.

COVER INTO. The phrase "covered into the treasury," as used in acts of congress and the practice of the United States treasury department, means that money has actually been paid into the treasury in the regular manner, as distinguished from merely depositing it with the treasurer. U. S. v. Johnston, 124 U.S. 236, 8 S.Ct. 446, 31 L.Ed. 389.

COVERING DEED. A trust deed executed by a trading company to secure an issue of debentures; Simonson, Debentures, 38.

COVERT. Covered, protected, sheltered. A *pound covert* is one that is closed or covered over, as distinguished from *pound overt,* which is open overhead. Co.Litt. 47b; 3 Bl.Comm. 12. A *feme covert* is so called, as being under the wing, protection, or *cover* of her husband. 1 Bl.Comm. 442.

COVERT BARON, or COVERT DE BARON. Under the protection of a husband; married. 1 El. Comm. 442. La *feme que est covert de baron,* the woman which is covert of a husband. Litt. § 670.

COVERTURE. The condition or state of a married woman. Sometimes used elliptically to describe the legal disability arising from a state of coverture. Osborn v. Horine, 19 Ill. 124; Roberts v. Lund, 45 Vt. 86.

COVIN. A secret conspiracy or agreement between two or more persons to injure or defraud another. Mix v. Muzzy, 28 Conn. 191; Anderson v. Oscamp, Ind.App., 35 N.E. 707; Hyslop v. Clarke, 14 Johns., N.Y., 465; Co.Litt. 357b; Comyns, Dig. Covin, A; 1 Viner, Abr. 473.

COVINOUS. Deceitful; fraudulent; having the nature of, or tainted by covin.

COW. Female of bovine genus of animals. Strictly, one that has calved. Often loosely used to include heifer, or young female that has not calved. 2 East, Pl.Cr. 616; 1 Leach 105. See Taylor v. State, 6 Humph., Tenn., 285; Tombigbee Valley R. Co. v. Wilks, 6 Ala.App. 473, 60 So. 559; Mathis v. State, 70 Fla. 194, 69 So. 697, 698; Parsons v. Kimmel, 206 Mich. 676, 173 N.W. 539, 540.

COWARDICE. Pusillanimity; fear; misbehavior through fear in relation to some duty to be performed before an enemy. O'Brien Ct.M. 142; Coil v. State, 62 Neb. 15, 86 N.W. 925.

CRACKING. The conversion, by means of heat and usually pressure, of the complex hydrocarbon molecules of heavier oils into the molecular structure of the desired lighter oils. Universal Oil Products Co. v. Skelly Oil Co., D.C.Del., 20 F.2d 995.

CRAFT. A general term, now commonly applied to all kinds of sailing vessels, though formerly restricted to the smaller vessels. The Wenonah, 21 Grat., Va., 697; Reed v. Ingham, 3 El. & B. 898.

A trade or occupation of the sort requiring skill and training, particularly manual skill combined with a knowledge of the principles of the art; also the body of persons pursuing such a calling; a guild. Ganahl v. Shore, 24 Ga. 23, Cole v. Commonwealth, 169 Va. 868, 193 S.E. 517, 519.

Guile, artful cunning, trickiness. Not a legal term in this sense, though often used in connection with such terms as "fraud" and "artifice."

CRANAGE. A liberty to use a crane for drawing up goods and wares of burden from ships and vessels, at any creek of the sea, or wharf, unto the land, and to make a profit of doing so. It also signifies the money paid and taken for the service. Tomlins.

CRANK. A term vulgarly applied to a person- of eccentric, ill-regulated, and unpractical mental habits; a person half-crazed; a monomaniac; not necessarily equivalent to "insane person," "lunatic," or any other term descriptive of complete

mental derangement, and not carrying any implication of homicidal mania. Walker v. Tribune Co., C.C.I11., 29 F. 827.

CRASSUS. Large; gross; excessive; extreme. *Crassa ignorantia,* gross ignorance. Fleta, lib. 5, c. 22, § 18.

Crassa negligentia. Gross neglect; absence of ordinary care and diligence. Hun v. Cary, 82 N.Y. 72, 37 Am.Rep. 546.

CRASTINO. Lat. On the morrow, the day after. The return-day of writs; because the first day of the term was always some saint's day, and writs were returnable on the day after. 2 Reeve, Eng. Law, 56.

CRATES. An iron gate before a prison. 1 Vent. 304.

CRAVE. To ask or demand; as to crave oyer. See Oyer.

CRAVEN. In old English law. A word of disgrace and obloquy, pronounced on either champion, in the ancient trial by battle, proving recreant, *e.,* yielding. Glanville calls it *"infestum et inverecundum verbum."* His condemnation was *amittere liberam legem, e.,* to become infamous, and not to be accounted *liber et legalis homo,* being supposed by the event to have been proved forsworn, and not fit to be put upon a jury or admitted as a witness. Wharton.

CRAZY. A broken, shattered, or deranged condition of the mind; insane. Bates v. Oden, 198 Ala. 569, 73 So. 921. Thompson v. State, 104 Tex. Cr.R. 637, 285 S.W. 826, 830.

CREAMER. A foreign merchant, but generally taken for one who has a stall in a fair or market. Blount.

CREAMUS. Lat. We create. One of the words by which a corporation in England was formerly created by the king. 1 Bl.Comm. 473.

CREANCE. In French law. A claim; a debt; also belief, credit, faith.

CREANCER. One who trusts or gives credit; a creditor. Britt. cc. 28, 78.

CREANSOR. A creditor. Cowell.

CREATE. To bring into being; to cause to exist; to produce; as, to create a trust in lands, to create a corporation. Edwards v. Bibb, 54 Ala. 481; McClellan v. McClellan, 65 Me. 500; Pickett v. Board of Com'rs of Fremont County, 24 Idaho 200, 133 P. 112, 114; People v. California Fish Co., 166 Cal. 576, 138 P. 79, 91.

To *create a* charter or a corporation Is to make one which never existed before, while to *renew* one is to give vitality to one which has been forfeited or has expired; and to *extend* one is to give an existing charter more time than originally limited. Indianapolis v. Navin, 151 Ind. 139, 51 N.E. 80, 41 L.R.A. 344; State v. Powell, 109 Ohio St. 383, 1.42 N.E. 401, 403; Town of Westernport v. Green, 144 Md. 85, 124 A. 403.

CREDENTIALS. In international law. The instruments which authorize and establish a public minister in his character with the state or prince to whom they are addressed. If the state or prince receive the minister, he can be received only in the quality attributed to him in his credentials. They are, as it were, his letter of attorney, his mandate patent, *mandatum manifestum.* Vattel, liv. 4, c. 6, § 76.

CREDIBILITY. Worthiness of belief; that quality in a witness which renders his evidence worthy of belief. After the competence of a witness is allowed, the consideration of his *credibility* arises, and not before. 3 Bl.Comm. 369; 1 Burrows, 414, 417; Smith v. Jones, 68 Vt. 132, 34 A. 424; Loeb v. State, 133 Miss. 883, 98 So. 449, 451; Dewein v. State, 120 Ark. 302, 179 S.W. 346, 347. As to the distinction between *competency* and *credibility,* see Competency.

CREDIBLE. Worthy of belief; entitled to credit. See Competency.

Credible person. One who is trustworthy and' entitled to be believed; in law and legal proceedings, one who is entitled to have his oath or affidavit accepted as reliable, not only on account of his good reputation for veracity, but also on account of his intelligence, knowledge of the circumstances, and disinterested relation to the matter in question. Also one who *is* competent to testify. Dunn v. State, 7 Tex.App. 605; Territory v. Leary, 8 N.M. 180, 43 P. 688; Loeb v. State, 133 Miss. 883, 98 So. 449, 451; Burleson v. State, 131 Tex.Cr.R. 576, 100 S.W.2d 1019, 1020.

Credible witness. One who *is* competent to give evidence; also one who *is* worthy of belief. Peck v. Chambers, 44 W.Va. 270, 28 S.E. 706; Savage v. Bulger, 77 S.W. 717, 25 Ky.Law.Rep. 1269; Appeal of Clark, 114 Me. 105, 95 A. 517, Ann.Cas. 1917A, 837; Hill v. Chicago Title & Trust Co., 322 M. 42, 152 N.E. 545, 546; Burleson v. State, 131 Tex.Cr.R. 576, 100 S.W.2d 1019, 1020.

CREDIBLY INFORMED. The statement in a pleading or affidavit, that one is "credibly informed and verily believes" such and such facts, means that, having no direct personal knowledge of the matter in question, he has derived his information in regard to it from authentic sources or from the statements of persons who are not only "credible," in the sense of being trustworthy, but also informed as to the particular matter or conversant with it.

CREDIT. The ability of a business man to borrow money, or obtain goods on time, in consequence of the favorable opinion held by the community, or by the particular lender, as to his solvency and reliability. People v. Wasservogle, 77 Cal. 173, 19 P. 270; In re Ford, D.C.Wash., 14 F.2d 848, 849; State ex rel. Globe-Democrat Pub. Co. v. Gehner, 316 Mo. 694, 294 S.W. 1017, 1018. That influence connected with certain social positions. 20 Toullier, n. 19. Time allowed to the buyer of goods by the seller, in which to make payment for them. The correlative of *a debt;*

that is, a debt considered from the creditor's standpoint, or that which is incoming or due *to* one. Mountain State Motor Car Co. v. Solof, 97 W.Va. 196, 124 S.E. 824, 825. That which is due to a person, as distinguished from debit, that which is due by him. Claim or cause of action for specific sum of money. Richard v. American Union Bank, 204 N.Y.S. 719, 722, 123 Misc.Rep. 92; Thaden v. Bagan, 139 Minn. 46, 165 N.W. 864, 865; Richard v. American Union Bank, 204 N.Y. S. 719, 722, 123 Misc.Rep. 92; New York Life Ins. Co. v. Edwards, C.C.A.N.Y., 8 F.2d 851, 856; Humphreys v. County Court, 90 W.Va. 315, 110 S.E. 701, 702, 703.

A sum credited on the books of a company to person who appears to be entitled to it. Coons v. Home Life Ins. Co. of New York, 291 Ill.App. 313, 9 N.E.2d 419, 421. The credit of an individual is the trust reposed in him by those who deal with him that he is of ability to meet his engagements; and he is trusted because through the tribunals of the country he may be made to pay. The credit of a government is founded on a belief of its ability to comply with its engagements, and a confidence in its honor, that it will do that voluntarily which it cannot be compelled to do. Owen v. Branch Bank, 3 Ala. 258.

Bill of Credit. See Bill.

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 bond 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 Chit.Com.Law, 336. Powerine Co. v. Russel Inc., 103 Utah 441, 135 P.2d M6, 909, 910, 912.

A written instrument, addressed by one person to another, requesting the latter to give credit to the person in whose favor it is drawn. Mechanics Bank v. New York & N. H. R. Co., 13 N.Y. 599; Lafargue v. Harrison, 70 Cal. 380, 9 P. 261, 59 Am.Rep. 416. A letter of credit is in the nature of a negotiable instrument, and is a letter whereby a person requests another to advance money or give credit to a third person, and promises to repay person making advancement. Second Nat. Bank of Toledo v. M. Samuel & Sons, C.C.A.N.Y., 12 F.2d 963, 966, 53 A.L.R. 49; Border Nat. Bank of Eagle Pass, Tex., v. American Nat. Bank of San Francisco, Cal., C.C.A.Tex., 282 F. 73, 77; Liggett v. Levy, 233 Mo. 590, 136 S.W.2d 299, 301, Ann.Cas.1912C, 70; *General and special.* A general letter of credit is one addressed to any and all persons, without naming any one in particular, while a special letter of credit is addressed to a particular individual, firm, or corporation by name. Birckhead v. Brown, 5 Hill, N.Y., 642; American Steel Co. v. Irving Nat. Bank, C.C.A.N.Y., 266 F. 41, 43. A "confirmed irrevocable letter of _credit,"" an "irrevocable letter," or a "confirmed credit" is a contract to pay on compliance with its terms, and needs no formal acknowledgment or acceptance other than is therein stated. Lamborn v. National Park Bank of New York, 240 N.Y. 520, 148 N.E. 664, 665.

Line of Credit. See Line.

Personal Credit. Personal credit is that credit which a person possesses as an individual, and which is founded on the opinion entertained of his character and business standing.

CREDIT. Fr. Credit in the English sense of the term, or more particularly, the security for a loan or advancement.

CREDIT FONCIER. A company or corporation formed for the purpose of carrying out improvements, by means of loans and advances on real estate security.

CREDIT MOBILIER. A company or association formed for carrying on a banking business or for the construction of public works, building of railroads, operation of mines, or other such enterprises, by means of loans or *advances* on the security of personal property. Barrett v. Savings Inst., 64 N.J.Eq. 425, 54 A. 543.

CREDITED. The alternative to paid. Lynchburg Trust & Savings Bank v. Commissioner of Internal Revenue, C.C.A.4, 68 F.2d 356, 358.

CREDITOR. A person to whom a debt is owing by another person who is the "debtor." Woolverton v. Taylor Co., 43 Ill.App. 424; Insurance Co. v. Meeker, 37 N.J.Law. 300; Walsh v. Miller, 51 Ohio St. 462, 38 N.E. 381; Rooney v. Inheritance Tax Commission of Kansas, 143 Kan. 143, 53 P.2d 500, 501. One who has a right to require the fulfillment of an obligation or contract. Mohr v. Minnesota Elevator Co., 40 Minn. 343, 41 N.W. 1074; Murphy v. Jos. Hollander, Inc., 131 N.J.L. 165, 34 A.2d 780, 783; one to whom money is due, and, in ordinary acceptation, has reference to financial or business transactions. State v. Ord State Bank, 117 Neb. 189, 220 N.W. 265, 266; The antonym of "debtor." Erickson v. Grande Ronde Lumber Co., 162 Or. 556, 92 P.2d 170, 177; The word is susceptible of latitudinous construction. Commerce Trust Co. v. Farmers' Exchange Bank of Gallatin, 332 Mo. 979, 61 S.W.2d 928, 89 A.L.R. 373.

The foregoing is the strict legal sense of the term; but in a wider sense it means one who has a legal right to demand and recover from another a sum of money on any account whatever, and hence may include the owner of any right of action against another, whether arising on contract or for a tort, a penalty, or a forfeiture. Bongard v. Block, 81 Ill. 186, 25 Am.Rep. 276; one having a claim for tort, Chalmers v. Sheehy, 132 Cal. 459, 64 P. 709, 84 Am.St. Rep. 62; an antenuptial agreement as constituting wife a "creditor" of husband's estate. In re Wilson's Estate, 346 Pa. 562, 31 A.2d 106, 108; parties claiming as trust *funds* deposits in insolvent bank, Dewey v. Commercial State Bank, 141 Kan. 356, 41 P.2d 1006, 1007.

The term "creditor," within the common-law and statutes that conveyances with intent to defraud creditors shall be void, includes every one having right to require the performance of any legal obligation, contract, or guaranty, or a legal right to damages growing out of contract or tort, Hernton v. Short, 121 Ark. 383, 181 S.W. 142, 144; and includes not merely the holder of a fixed and certain present debt, but every one having a right to require the performance of any legal obligation, contract, or guaranty, or a legal right to damages growing out of contract or tort, and includes one entitled to damages for breach of contract to convey real estate, notwithstanding the abandonment of his action for specific performance, In re Littleton's Estate, 223 N.Y.S. 470, 479, 129 Misc.Rep. 845; Mackenzie Oil Co. v. Omar Oil & Gas Co., 14 Del.Ch. 36, 120 A. 852, 854; holders of judgment for conversion, Bays v. Brown, 160 Or. 594, 86 P.2d 951, 954; a "person having any claim, whether matured or unmatured, liquidated or unliquidated, absolute, fixed or contingent." Richards v. Jones, 16 Del.Ch. 227, 142 A. 832, 833. Those having a cause of action for damages for wrongful death. Evers v. Evers, 146 Neb. 104,

18 N.W.2d 673, 678; in its broad sense the word "creditor" means one who has any legal liability upon a contract, express or implied, or in tort; in its narrow sense, the term is limited to one who holds a demand which is certain and liquidated. Superior Plating Works v. Art Metal Crafts Co., 218 Ill. App. 148, 150.

Plaintiff, in action to recover damages for a tort committed against him, is a "creditor" of defendant, within meaning of that term *as* it is employed in Shannon's Code, § 3143, denouncing conveyances and transfers of property collusively made with intent to delay, hinder, or defraud creditors. Oliphant v. Moore, 155 Tenn, 359, 293 S. W. 541, 542.

In statutes the term has various special meanings, dependent upon context, purpose of statute, etc. Toof v. City Nat. Bank of Paducah, Ky., C.C.A.Ky., 206 F. 250, 252; a bank taking chattel mortgage for pre-existing debt. Lindig v. Johnson City State Bank, Tex.Com.App., 41 S.W.2d 222, 224. An assignee of conditional seller taking trucks as creditor of purchaser, John W. Snyder, Inc., v. Aker, 134 Misc. 721, 236 N.Y.S. 28, 30. One who had recovered verdict against principal on attachment bond, Amer Realty Co. v. Spack, 280 Mass. 96, 181 N; E. 753, 754; the receiver of an insolvent national bank suing to enforce statutory stockholder's liability for benefit of creditors as a "creditor", Coffey v. Fisher, C.C.A.Tenn., 100 F.2d 51, 33; person to whom letters of administration granted. State ex rel. Gentry v. O' Byrne, 221 Ind. 282, 46 N.E.2d 687, 690. One, seeking to recover from a special administrator for conversion, United States Fidelity & Guaranty Co. v. Krow, 184 Okl. 444, 87 P.2d 950, 954; holders of participation certificates in mortgage, In re R. A. Security Holdings, D.C.N.Y., 46 F.Supp. 254, 255; persons who seize property under a legal process. Neils v. Bohlsen, 181 Minn. 25, 231 N.W. 248; state and political subdivisions, to which the forfeit is payable, International Harvester Co. v. Gully, 188 Miss. 115, 194 So. 472, 473. The National Labor Relations Board, seeking enforcement of a back pay allowance, National Labor Relations Board v. Killoren, C.C.A.Mo., 122 F.2d 609, 612. The United States which filed for record, Underwood v. United States, D.C.Tex., 37 F.Supp. 824, 826. The Reconstruction Finance Corporation, which had purchased over 86 per cent. of outstanding bonds of insolvent irrigation district, pursuant to plan to refinance entire bond indebtedness of district, West Coast Life Ins. Co. v. Merced Irr, Dist., C.C.A.Cal., 114 F.2d 654, 668, 669.

### Classification

A creditor is called a "simple contract creditor," a "specialty creditor," a "bond creditor," or otherwise, according to the nature of the obligation giving rise to the debt.

### Attaching creditor,

One who has caused an attachment to be issued and levied on property of his debtor.

### Catholic creditor

In Scotch law, one whose debt is secured on all or on several distinct parts of the debtor's property. The contracted term (designating one who is not so secured) is "secondary creditor."

### Certificate creditor

A creditor of a municipal corporation who receives a certificate of indebtedness for the amount of his claim, there being no funds on hand to pay him. Johnson v. New Orleans, 46 La.Ann. 714, 15 So. 100.

### Confidential 'creditor

A term sometimes applied to creditors of a failing debtor who furnished him with the means of obtaining credit to which his real circumstances did not entitle him, thus involving loss to other creditors not in his confidence. Gay v. Strickland, 112 Ala. 567, 20 So. 921.

### Creditor at large

One who has not established his debt by the recovery of a judgment or has not otherwise secured a lien on any of the debtor's property. U. S. v. Ingate, C.C.Ala., 48 F. 254; Wolcott v. Ashenfelter, 5 N.M. 442, 23 P. 780, 8 L.R.A. 691.

### Domestic creditor

One who resides in the same state or country in which the debtor has his domicile or his property.

### Double creditor

See Double Creditor.

### Execution creditor

One who, having recovered a judgment against the debtor for his debt or claim, has also caused an execution to be issued thereon. Chalmers & Williams v. Surprise, 70 Ind.App. 646, 123 N.E. 841, 844.

### Executor creditor

In Scotch law. A creditor of a decedent who obtains a grant of administration on the estate, at least to the extent of so much of it as will be sufficient to discharge his debt, when the executor named in the will has declined to serve, as also those other persons who would be preferentially entitled to administer.

### Existing creditors

See Existing Creditors.

### Foreign creditor

One who resides in a state or country foreign to that where the debtor has his domicile or his property.

### General creditor

A creditor at large *(supra),* or one who has no lien or security for the payment of his debt or claim. Wolcott v. Ashenfelter, 5 N.M. 442, 23 P. 780, 8 L.R.A. 691.

### Joint creditors

Persons jointly entitled to require satisfaction. of the same debt or demand.

### Judgment creditor

See Judgment Creditor.

### Junior creditor

One whose claim or demand accrued at a date later than that of a claim or demand held by another creditor, who is called correlatively the "senior" creditor.

### Petitioning creditors

As used in Bankruptcy Act, § 64b, 11 U.S.C.A. § 104, authorizing one reasonable attorney's fee.

All creditors petitioning for adjudication, or seeking relief consistent with original petition by supplemental or intervening petition, in view of section 59f, 11 U.S.C.A. § 95. In re Marcuse & Co., C.C.A.Il1., 11 F.2d 513, 516.

Principal creditor

One whose claim or demand very greatly exceeds the claims of all other creditors in amount is sometimes so called. See In re Sullivan's Estate, 25 Wash. 430, 65 P. 793.

Secured creditor

See Secured Creditor.

Single creditor

See Single Creditor.

Subsequent creditor

One whose claim or demand accrued or came into existence after a given fact or transaction, such as the recording of a deed or mortgage or the execution of a voluntary conveyance. McGhee v. Wells, 57 S.C. 280, 35 S.E. 529, 76 Am.St.Rep. 567.

Warrant creditor

A creditor of a municipal corporation to whom is given a municipal warrant for the amount of his claim, because there are no funds in hand to pay it. Johnson v. New Orleans, 46 La.Ann. 714, 15 So. 100.

CREDITOR BENEFICIARY. A third person to whom performance of promise comes in satisfaction of legal duty. Breaux v. Banker, Tex.Civ. App., 107 S.W.2d 382, 389; Vail v. Reuben H. Donnelley Corporation, 56 Ohio App. 219, 10 N.E.2d 239, 241.

Company transporting material for school building under contract with subcontractor. J. T. Jackson Lumber Co. v. Union Transfer & Storage Co., 246 Ky. 653, 55 S.W.2d 670. Person entitled to enforce contract under which he is entitled to benefit. Hartman Ranch Co. v. Associated Oil Co., 10 Ca1.2d 232, '73 P.2d 1163, 1169. Situation in which relationship between promisee and beneficiary is that of debtor and creditor. McCulloch v. Canadian Pac. Ry. Co., D.C.Minn., 53 F.Supp. 534, 542.

The lessor has a right of action for breach of parent lease as a "creditor beneficiary" against a sublessee or an assignee of the lease who has agreed with the original lessee to assume the parent lease. Hartman Ranch Co. v. Associated Oil Co., 10 CaL2d 232, 73 P.2d 1163.

CREDITORS' BILL OR SUIT.

A suit by judgment creditor in equity for purpose of reaching property which cannot be reached by execution at law. B. L. E. Realty Corporation v. Mary Williams Co., 101 Fla. 254, 134 So. 47, 49; Ex parte Roddey, 171 S.C. 489, 172 S.E. 866, 868, 92 A.L.R. 1430; Hamburger Apparel Co. v. Werner, 17 Wash.2d 310, 135 P.2d 311, 315; City of Newark v. Jos. Hollander, Inc., 136 N.J. Eq. 539, 42 A.2d 872, 875. A proceeding to enforce the security of a judgment creditor against the property or interests of his debtor. This action proceeds upon the theory that the judgment is in the nature of a lien, such as may be enforced in equity. Hudson v. Wood, C.C.Ky., 119 F. 775; Fink v. Patterson, C.C.Va., 21 F. 602; W. G. Press & Co. v. Fahy, 313 Ill. 262, 145 N.E, 103, 104; San Bernardino County Sa$^{y}$. Bank v. Denman, 186 Cal. 710, 200 P. 606, 609; Harkin v. Brundage, 276 U.S. 36, 48 S.Ct. 268, 72 L.Ed. 457.

Strictly, it is a bill by which a creditor seeks to satisfy his debt out of some equitable estate of the defendant, which is not liable to levy and sale under an execution at law. But there is another sort of a creditors' bill, very nearly allied to the former, by means of which a party seeks to remove a fraudulent conveyance out of the way of his execution. But a naked bill to set aside a fraudulent deed, which seeks no discovery of any property, chose in action, or other thing alleged to belong to the defendant, and which ought to be subjected to the payment of the judgment, is not a creditors' bill. Newman v. Willetts, 52 Ill. 98; Yates v. Council, 137 Miss. 381, 102 So. 176, 177.

A "class action" is one in which one or more members of a numerous class, having a common interest, may sue in behalf of themselves and all other members of the class and such actions are sometimes called "creditors' suits" and "stockholders' suits". Farmers Co-op. Oil Co. v. Socony-Vacuum Oil Co., D.C.Iowa, 43 F.Supp. 735, 737.

In English Practice, a bill in equity, filed by one or more creditors, for an account of the assets of a decedent, and a legal settlement and distribution of his estate among themselves and such other creditors as may come in under the decree.

CREDITORUM APPELLATIONE NON III TANTUM ACCIPIUNTUR QUI PECUNIAM CREDIDERUNT, SED OMNES QUIBUS EX QUALIBET CAUSA DEBETUR. Under the head of "creditors" are included, not alone those who have lent money, but all to whom from any cause a debt is owing. Dig. 50, 16, 11.

CREDITRIX. A female creditor.

CREDITS. A term of universal application to obligations due and to become due. Colbert v. Superior Confection Co., 154 Okl. 28, 6 P.2d 791, 793.

A term used in taxation statutes to designate certain forms of personal property. It includes every claim and demand for money and every sum of money receivable at stated periods, due or to become due, but not unaccrued rents to issue out of land. State v. Royal Mineral Ass'n, 132 Minn. 232, 156 N.W. 128, 130, Ann.Cas.1918A, 145. Legacies matured by the lapse of one year from the date of testator's death were included in term "credits". City of Newark v. Lehman's Estate, Tax App., 18 N.J.Misc. 510, 14 A.2d 792, 794. Shares of corporate stock were included. Holmes v. Borgen, 200 Minn. 97, 273 N.W. 623, 626.

Mutual Credits

In bankrupt law. Credits which must, from their nature, terminate in debts; as where a debt is due from one party, and credit given by him to the other for a sum of money payable at a future day, and which will then become a debt., or where there is a debt on one side, and a delivery of property with directions to turn it into money on the other. 8 Taunt. 499; 2 Smith, Lead. Cas. 179. By this phrase, in the rule under which courts of equity allow set-off in cases of mutual credit, we are to understand a knowledge on both sides of an existing debt due to one party, and

a credit by the other party, founded on and trusting to such debt, as a means of discharging it. King v. King, 9 N.J.Eq. 44. Credits given by two persons mutually; *i. e.,* each giving credit to the other. It is a more extensive phrase than "mutual debts." Thus, the sum credited by one may be due at once, that by the other payable *in futuro;* yet the credits are mutual, though the transaction would not come within the meaning of "mutual debts." 1 Atk. 230; Atkinson v. Elliott, 7 Term.R. 378.

CREED. The word "creed" has been defined as "confession or articles of faith," "formal declaration of religious belief," "any formula or confession of religious faith," and "a system of religious belief." Cummings v. Weinfeld, 177 Misc. 129, 30 N.Y.S.2d 36, 38.

CREEK. In maritime law. Such little inlets of the sea, whether within the precinct or extent of a port or without, as are narrow passages, and have shore on each side of them. Call.Sew. 56. A small stream less than a river. Baker v. City of Boston, 12 Pick. 184, 22 Am.Dec. 421. The term imports a recess, cove, bay, or inlet in the shore of a river, and not a separate or independent stream; though it is sometimes used in the latter meaning. Schermerhorn v. Railroad Co., 38 N.Y. 103.

CREMATION. The act or practice of reducing a corpse to ashes by means of fire. Act Pa. 1891, June 8; P.L. 212, 35 P.S. §§ 1121-1123; L.R. 12 Q.B.D. 247; L.R. 20 Ch.D. 659. See 43 Alb.L.J. 140. See Dead Body.

CREMENTUM COMITATUS. The increase of a county. The sheriffs of counties anciently answered in their accounts for the improvement of the king's rents, above the *viscontiel* rents, under this title.

CREPARE OCULUM. In Saxon law. To put out an eye; which had a pecuniary punishment of fifty shillings annexed to it.

CREPUSCULUM. Twilight. In the law of burglary, this terms means the presence of sufficient light to discern the face of a man; such light as exists immediately before the rising of the sun or directly after its setting. 4 Bla.Com. 224; Co. 3d Inst. 63; 1 Russell, Cr. 820; 3 Greenl.Ev. § 75.

CRESCENTE MALITIA CRESCERE DEBET ET PLENA. 2 Inst. 479. Vice increasing, punishment ought also to increase.

CREST. A term used in heraldry; it signifies the devices set over a coat of arms.

CRETINISM. In medical jurisprudence. A form of imperfect or arrested mental development, which may amount to idiocy, with physical degeneracy or deformity or lack of development; endemic in Switzerland and some other parts of Europe, but the term is applied to similar states occurring elsewhere.

CRETINUS. In old records. A sudden stream or torrent; a rising or inundation.

CRETIO. Lat. In the civil law. A certain number of days allowed an heir to deliberate whether he would take the inheritance or not. Calvin.

CREW. Usually referred to and is primarily thought of as those who are on board and aiding in the navigation. Gulf Oil Corporation v. Mc- D.C.W.Va., 49 F.Supp. 75, 78; Norton v. Warner Co., Pa., 321 U.S. 565, 64 S.Ct. 747, 751, 88 L.Ed. 931; Berwind-White Coal Mining Co. v. Rothensies, C.C.A.Pa., 137 F.2d 60, 62. "Crew" does not have an absolutely unvarying legal significance or any well-defined factual significance. Schantz v. American Dredging Co., C.C.A.Pa., 138 F.2d 534, 537. The aggregate of seamen who man a ship or vessel, including the master and officers; or it may mean the ship's company, exclusive of the master, or exclusive of the master and all other officers. See U. S. v. Winn, 3 Sumn. 209, 28 Fed.Cas. 733; The Buena Ventura, D.C.N.Y., 243 F. 797, 799; The Herdis, D.C.Md., 22 F.2d 304, 306.

CREW LIST. In maritime law. A list of the crew of a vessel; one of a ship's papers. This instrument is required by act of congress, and sometimes by treaties. Rev.St.U.S. §§ 4374, 4375, 46 U.S.C.A. §§ 322, 323. It is necessary for the protection of the crews of every vessel, in the course of the voyage, during a war abroad. Jac. Sea Laws, 66, 69, note.

CRIER. An officer of a court, who makes proclamations. His principal duties are to announce the opening of the court and its adjournment and the fact that certain special matters are about to be transacted, to announce the admission of persons to the bar, to call the names of jurors, witnesses, and parties, to announce that a witness has been sworn, to proclaim silence when so directed, and generally to make such proclamations of a public nature as the judges order.

CRIEZ LA PEEZ. Rehearse the concord, or peace. A phrase used in the ancient proceedings for levying fines. It was the form of words by which the justice before whom the parties appeared directed the serjeant or countor in attend.. ance to recite or *read aloud* the *concord* or agreement between the parties, as to the lands intended to be conveyed. 2 Reeve, Eng.Law, 224, 225.

CRIM. CON. An abbreviation for "criminal conversation," of very frequent use, denoting adultery. Rash v. Pratt, 111 A. 225, 228, 1 W.W.Harr., Del., 18; Hargraves v. Ballou, 47 R.I. 186, 131 A. 643, 645.

The term in its general and comprehensive sense, is synonymous with "adultery" ; but in its more limited and technical signification it may be defined as adultery in the aspect of a tort. Turner v. Heavrin, 182 Ky. 65, 206 S.W. 23, 4 A.L.R. 562.

CRIME. A positive or negative act in violation of penal law; an offense against the State. Wilkins v. U. S., C.C.A.Pa., 96 F. 837, 37 C.C.A. 588; People v. Williams, 24 Mich. 163, 9 Am.Rep. 119.

"Crime" and "misdemeanor," properly speaking, are synonymous terms; though in common usage "crime" is made to denote such offenses as are of a deeper and more atrocious dye. 4 Bl.Comm. 5; People v. Schiaffino, 73. Cal.App. 357, 238 P. 725; Guetling v. State, 199 Ind. 630, 158 N.E. 593, 594; McIntyre v. Commonwealth, 154 Ky. 149, 156 S. W. 1058, 1059; Commonwealth v. Smith, 266 Pa. 511, 109 A. 786, 788, 9 A.L.R. 922; Ex parte Brady, 116 Ohio St. 512, 157 N.E. 69, 70; An act committed or omitted in violation of a public law. City of Mobile v. McCown Oil Co., 226 Ala. 688, 148 So. 402, 405. Crimes are those wrongs which the government notices as injurious to the public, and punishes in what is called a "criminal proceeding," in its own name. 1 Bish.Crim.Law, § 43; In re Jacoby, 74 Ohio App. 147, 57 N.E.2d 932, 934, 935. A crime may be defined to be any act • done in violation of those duties which an individual owes to the community, and for the breach of which the law has provided that the offender shall make satisfaction to the public. Bell. A crime or public offense is an act committed or omitted in violation of a law forbidding or commanding it, and to which is annexed, upon conviction, either of the following punishments: (1) Death; (2) imprisonment; (3) fine; (4) removal from office; or (5) disqualification to hold and enjoy any office of honor, trust, or profit in this state. Pen.Code Cal. § 15. "Crime" is strictly a violation of law either human or divine; in present usage the term is commonly applied to grave offenses against the laws of the state. Van Riper v. Constitutional Government League, 1 Wash.2d 635, 96 P.2d 588, 591, 125 A.L.R. 1100. A crime or misdemeanor shall consist in a violation of a public law, in the commission of which there shall be a union or joint operation of act and intention, or criminal negligence. Code Ga. 1882, § 4292, Pen.Code 1910, § 31.

### Synonyms

According to Blackstone, the word "crime" denotes such offenses as are of a deeper and more atrocious dye, while smaller faults and omissions of less consequence are called "misdemeanors." But the better use appears to be to make *crime* a term of broad and general import, including both felonies and misdemeanors, and hence covering all infractions of the criminal law. In this sense it is not a technical phrase, strictly speaking, (as "felony" and "misdemeanor" are,) but a convenient general term. In this sense, also, "offense" or "public offense" should be used as synonymous with it.

The distinction between a *crime* and a *tort* or civil injury is that the former is a breach and violation of the public right and of duties due to the whole community considered as such, and in its social and aggregate capacity; whereas the latter is an infringement or privation of the civil rights of individuals merely. Brown.

A crime, as opposed to a civil injury, is the violation of a right, considered in reference to the evil tendency of such violation, as regards the community at large. 4 Steph.Comm. 4.

### Varieties of Crimes

Capital crime. See Capital, *adj.*

### Common law crimes

Such crimes as are punishable by the force of the common law, as distinguished from crimes created by statute. Wilkins v. U. S., C.C.A.Pa., 96 F. 837, 37 C.C.A. 588; In re Greene, C.C.Ohio, 52 F. 111. These decisions (and many others) hold that there are no common-law crimes against the United States.

### Constructive crime

See Constructive Crime.

### Continuous crime

One consisting of a continuous series of acts, which endures after the period of consummation, as, the offense of carrying concealed weapons. In the case of instantaneous crimes, the statute of limitations begins to run with the consummation, while in the case of continuous crimes it only begins with the cessation of the criminal conduct or act. U. S. v. Owen, D.C.Or., 32 F. 537.

### Crime against nature

The offense of buggery or sodomy. State v. Vicknair, 52 La.Ann. 1921, 28 So. 273; Ausman v. Veal, 10 Ind. 355, 71 Am.Dec. 331. The strict common-law meaning has been greatly enlarged by statute. Borden v. State, 3G Okl.Cr. 69, 252 P. 446, 447; State v. Murry, 136 La. 253, 66 So. 963, 964; State v. Long, 133 La. 580, 63 So. 180; Frazier v. Grob, 194 Mo.App. 405, 183 S.W. 1083, 1084; State v. Griffin, 175 N.C. 767, 94 S.E. 678, 679. See Bestiality; Sodomy.

At common law the term "crime against nature" embraced both sodomy and "bestiality", defined as a connection between a human being and a brute of the opposite sex. State v. Poole, 59 Ariz. 44, 122 P.2d 415, 416. Within the statute it is the perverted act of uniting the mouth of one participant with the sexual organ of the other, with a view of gratifying the sexual desire, and a mere kiss or lick of the private organ, even though lewdly done, is not a "copulation" within the statute. People v. Angier, 44 Cal.App.2d 417, 112 P.2d 659, 660.

### Crime against the other (husband or wife)

As used in 22 Okl.St.Ann. 702, providing that neither husband nor wife shall be a witness against the other except in a prosecution for a "crime committed against the other," the phrase denotes a public offense by husband or wife that is a direct violation of the rights of the other. Hunter v. State, 10 Okl.Cr. 119, 134 P. 1134, 1136, L.R.A. 1915A, 564. It does not make the wife a competent witness in a prosecution against the husband for incest. Lacey v. State, 27 Okl.Cr. 42, 224 P. 994, 995.

Murder by wife of husband's child, O'Loughlin v. People, 90 Colo. 368, 10 P.2d 543, 546. Rape against stepdaughter. State v. Goff, 64 S.D. 80, 264 N.W. 665, 666.

### Crimes mala in se

"Crimes mala in se" embrace acts immoral or wrong in themselves, such as burglary, larceny,

arson, rape, murder, and breaches of peace. Coleman v. State ex rel. Carver, 119 Fla. 653, 161 So. 89, 90.

Crimes mala prohibita

"Crimes mala prohibita" embrace things prohibited by statute as infringing on others' rights, though no moral turpitude may attach, and constituting crimes only because they are so prohibited. Coleman v. State ex rel. Carver, 119 Fla. 653, 161 So. 89, 90.

High crimes

High crimes and misdemeanors are such immoral and unlawful acts as are nearly allied and equal in guilt to felony, yet, owing to some technical circumstance, do not fall within the definition of "felony." State v. Knapp, 6 Conn. 417, 16 Am.Dec. 68. They are the more serious or aggravated misdemeanors; those more nearly allied and equal in guilt to felony, but which do not fall within its definition. Firmara v. Gardner, 86 Conn. 434, 85 A. 670, 672.

Infamous crime

A crime which entails infamy upon one who has committed it. Butler v. Wentworth, 84 Me. 25, 24 A. 456, 17 L.R.A. 764. The term "infamous" *e.,* without fame or good report—was applied at common law to certain crimes, upon the conviction of which a person became incompetent to testify as a witness, upon the theory that a person would not commit so heinous a crime unless he was so depraved as to be unworthy of credit. These crimes are treason, felony, and the *crimen falsi.* Abbott. A crime punishable by imprisonment in the state prison or penitentiary, with or without hard labor, is an infamous crime, within the provision of the fifth amendment of the constitution that "no person shall be held to answer for a capital or otherwise infamous crime unless on a presentment or indictment of a grand jury." Mackin v. U. S., 117 U.S. 348, 6 S.Ct. 777, 29 L. Ed. 909; Brede v. Powers, 263 U.S. 4, 44 S.Ct. 8, 68 L.Ed. 132. It is not the character of the crime but the nature of the punishment which renders the crime "infamous." Weeks v. United States, C.C.A.N.Y., 216 F. 292, 298, L.R.A. 1915B, 651. But see Drazen v. New Haven Taxicab Co., 95 Conn. 500, 111 A. 861, 864. Whether an offense is infamous depends on the punishment which may be imposed therefor, not on the punishment which was imposed. United States v. Moreland, 258 U.S. 433, 42 S.Ct. 368, 370, 66 L.Ed. 700; De Jianne v. U. S., C.C.A.N.J., 282 F. 737, 740; Le Clair v. White, 117 Me. 335, 104 A. 516, 517. Under the constitution of Rhode Island, a crime, to be "infamous," must come within the "crimen falsi," such as forgery, perjury, subornation of perjury, offenses affecting the public administration of justice, or such as would affect civil or political rights, disqualifying or rendering a person incompetent to be a witness or juror. State v. Bussay, 38 R.I. 454, 96 A. 337, 339. By the Revised Statutes of New York the term "infamous crime," when used in any statute, is directed to be construed as including every offense punishable with death or by imprisonment in a state prison, and no other.

Quasi crimes

This term embraces all offenses not crimes or misdemeanors, but that are in the nature of crimes,—a class of offenses against the public which have not been declared crimes, but wrongs against the general or local public which it is proper should be repressed or punished by forfeitures and penalties. This would embrace all *qui tarn* actions and forfeitures imposed for the neglect or violation of a public duty. A *quasi* crime would not embrace an indictable offense, whatever might be its grade, but simply forfeitures for a wrong done to the public, whether voluntary or involuntary, where a penalty is given, whether recoverable by criminal or civil process. Wiggins v. Chicago, 68 Ill. 375. Also, offenses for which some person other than the actual perpetrator is responsible, the perpetrator being presumed to act by command of the responsible party. Sometimes, injuries which have been unintentionally caused. Torts. McCaleb v. Fox Film Corporation, C.C.A.La., 299 F. 48, 50.

Statutory crimes

Those created by statutes, as distinguished from such as are known to, or cognizable by, the common law.

CRIMEN. Lat. Crime. Also an accusation or charge of crime.

Crimen furti. The crime or offense of theft.

Crimen incendii. The crime of burning, which included not only the modern crime of arson, but also the burning of a man, a beast, or other chattel. Britt. c. 9; Crabb, Eng.Law, 308.

Crimen innominatum. The nameless crime; the crime against nature; sodomy or buggery.

Crimen raptus. The crime of rape.

Crimen roberix. The offense of robbery.

Flagrans crimen; Locus criminis; Particeps criminis. See those titles.

CRIMEN FALSI. The term involves the element of falsehood, and includes everything which has a tendency to injuriously affect the administration of justice by the introduction of falsehood and fraud. Commonwealth v. Schambers, 110 Pa. Super. 61, 167 A. 645, 646; Commonwealth v. Jones, 334 Pa. 321, 5 A.2d 804, 805. A crime less than felony that by its nature tends to cast doubt on the veracity of one who commits it. Commonwealth v. Gold, 155 Pa.Super. 364, 38 A.2d 486, 489. This phrase is also used as a general designation of a class of offenses, including all such as involve deceit or falsification; *e. g.,* forgery, counterfeiting, using false weights or measures, perjury, etc. Includes forgery, perjury, subornation of perjury, and offenses affecting the public administration of justice. Matzenbaugh v. Peo-

ple, 194 Ill. 108, 62 N.E. 546, 88 Am.St.Rep. 134; Johnston v. Riley, 13 Ga. 97.

At common law. Any crime which rendered the perpetrator incompetent to be a witness, such as forgery, perjury, subornation of perjury and other crimes affecting the administration of justice. Drazen v. New Haven Taxicab Co., 95 Conn. 500, 111 A. 861, 862; Maxey v. United States, C.C.A.Ark., 207 F. 327, 331; Webb v. State, 29 Ohio St. 351, 358.

In the civil law, the crime of falsifying; which might be committed either by writing, as by the forgery of a will or other instrument; by words, as by bearing false witness. or perjury; and by acts, as by counterfeiting or adulterating the public money, dealing with false weights and measures, counterfeiting seals, and other fraudulent and deceitful practices. Dig. 48, 10; Hallifax, Civil Law, b. 3, c. 12, nn. 56-59.

In Scotch law. It has been defined: "A fraudulent imitation or suppression of truth, to the prejudice of another." Ersk.Inst. 4, 4, 66.

CRIMEN FALSI DICITUR, CUM QUIS ILLICITUS, CUI NON FUERIT AD IFEC DATA ATTCTORITAS, DE SIGILLO REGIS, RAPTO VEL INVENTO, BREVIA, CARTASVE CONSIGNAVERIT. Fleta, lib. 1, c. 23. The crime of forgery is when any one illicitly, to whom power has not been given for such purposes, has signed writs or charters with the king's seal, either stolen or found.

CRIMEN LIESIE MAJESTATIS. In criminal law. The crime of *lese-majesty,* or injuring majesty or royalty; high treason. The term was used by the older English law writers to denote any crime affecting the king's person or dignity.

It is borrowed from the civil law, in which it signified the undertaking of any enterprise against the emperor or the republic. Inst. 4, 18, 3.

CRIMEN L1ESz'E MAJESTATIS OMNIA ALIA atEVIINA EXCEDIT QUOAD PENAM. 3 Inst. 210. The crime of treason exceeds all other crimes in its punishment.

CRIMEN OMNIA EX SE NATA VITIAT. Crime vitiates everything which springs from it. Henry v. Bank of Salina, 5 Hill, N.Y., 523, 531.

CRIMEN TRAHIT PERSONAM. The crime carries the person, *(i. e.,* the commission of a crime gives the courts of the place where it is committed jurisdiction over the person of the offender.) People v. Adams, 3 Denio, N.Y. 190, 210, 45 Am.Dec. 468.

CRIMINA MORTE EXTINGUUNTUR. Crimes are extinguished by death.

CRIMINAL, n. One who has committed a criminal offense; one who has been legally convicted of a crime; one adjudged guilty of crime. Molineux v. Collins, 177 N.Y. 395, 69 N.E. 727, 65 L.R.A. 104. Synonymous with word "crook." Weiner v. Leviton, 230 App.Div. 312, 244 N.Y.S. 176, 178.

CRIMINAL, *adj.* That which pertains to or is connected with the law of crimes, or the administration of penal justice, or which relates to or has the character of crime. Charleston v. Beller, 45 W.Va. 44, 30 S.E. 152; Van Riper v. Constitutional Government League, 1 Wash.2d 635, 96 P.2d 588, 591, 125 A.L.R. 1100. The word is defined as of the nature of or involving a crime; more generally, of the nature of a grave offense; wicked. Van Riper v. Constitutional government League, 1 Wash.2d 635, 96 P.2d 588, 591, 125 A.L.R. 1100.

Criminal abortion

See Abortion.

Criminal act

A term which is equivalent to crime; or is sometimes used with a slight softening or glossing of the meaning, or as importing a possible question of the legal guilt of the deed. The intentional violation of statute designed to protect human life is criminal act. State v. Agnew, 202 N.C. 755, 164 S.E. 578, 579.

Criminal action

The proceeding by which a party charged with a public offense is accused and brought to trial and punishment is known as a "criminal action." Pen.Code Cal. § 683. A criminal action is (1) an action prosecuted by the state as a party, against a person charged with a public offense, for the punishment thereof ; (2) an action prosecuted by the state, at the instance of an individual, to prevent an apprehended crime, against his person or property. Code N.C. 1883, § 129, C.S. § 395.

Criminal assault and battery

An accused may be guilty of a "criminal assault and battery" if he intentionally does an act which by reason of its wanton and grossly negligent character exposes another to personal injury and in fact causes injury. State v. Linville, 150 Kan. 617, 95 P.2d 332, 334.

Criminal case

An action, suit, or cause instituted to punish an infraction of the criminal laws. State v. Smalls, 11 S.C. 279; People v. Iron Co., 201 Ill. 236, 66 N.E. 349; Wilburn v. State, 140 Ga. 138, 78 S.E. 819, 820; Hankamer v. Templin, 143 Tex. 572, 187- S.W.2d 549, 550. The phrase has various meanings according to context and purpose of constitutional provision or statute. Ex parte Tahbel, 46 Cal. App. 755, 189 P. 804, 806; Childs v. City of Birmingham, 19 Ala.App. 71, 94 So. 790; Barnett v.. Atlanta, 109 Ga. 166, 34 S.E. 322.

Criminal charge

An accusation of crime, formulated in a written complaint, information, or indictment, and taking shape in a prosecution. U. S. v. Patterson, 150 U._ S. 65, 14 S.Ct. 20, 37 L.Ed. 999; Eason v. State, 11 Ark. 482; People v. Ross, 235 Mich. 433, 209 N.W. 663, 666.

Criminal contempt proceeding

"Criminal contempt proceedings" are brought to preserve the power and vindicate the dignity and integrity of the court and to punish for disobedience of its orders. O'Malley v. United States, C.C.A.Mo., 128 F.2d 676, 683.

Criminal conversation

Defilement of the marriage bed, sexual intercourse of an outsider with husband or wife, or a breaking down of the covenant of fidelity. Young v. Young, 236 Ala. 627, 184 So. 187, 190, 191. Adultery, considered in its aspect of a civil injury to the husband entitling him to damages; the tort of debauching or seducing of a wife. Often abbreviated to *crim. con.*

Criminal court

One where criminal cases are tried and determined, not one where civil cases are tried, or persons charged with criminal offenses are held for action by proper authority. Hobart v. First Criminal Judicial Dist. of Court of Bergen Coun-V, 10 N.J.Misc. 723, 160 A. 674, 675.

Criminal gross negligence

"Gross negligence" is culpable or criminal when accompanied by acts of commission or omission, of a wanton or willful nature, showing a reckless or indifferent disregard of the rights of others, under circumstances reasonably calculated to produce injury, or which make it not improbable that injury will be occasioned, and the offender knows or is charged with knowledge of the probable result of his acts; "culpable" meaning deserving of blame or censure. Bell v. Commonwealth, 170 Va. 597, 195 S.E. 675, 681.

Criminal information

A criminal suit brought, without interposition of a grand jury, by the proper officer of the king or state. Cole, Cr.Inf.; 4 Bla.Com. 398.

Criminal insanity

Want of mental capacity and moral freedom to do or abstain from doing particular act. State v. Schafer, 156 Wash. 240, 286 P. 833, 838.

Criminal instrumentality rule

Where the wrong is accomplished by a crime, the crime and not the negligent act of the party which made it possible is the "proximate cause". Foutch v. Alexandria Bank & Trust Co., 177 Tenn. 348, 149 S.W.2d 76, 85.

Criminal intent

The intent to commit a crime; malice, as evidenced by a criminal act; an intent to deprive or defraud the true owner of his property. People v. Borden's Condensed Milk Co., 165 App.Div. 711, 151 N.Y.S. 547, 549; State v. Howard, 162 La. 719, 111 So. 72, 76.

Criminal malversation

A broad category of corrupt official practices. Jimenez v. Aristeguieta, C.A.Fla., 311 F.2d 547, 562.

*Criminal* Motive

"Criminal motive" is the inducement, existing in the minds of persons, causing them to intend, and afterward to commit, crime. State v. Richardson, 197 Wash. 157, 84 P.2d 699, 703.

Criminal Procedure

The method pointed out by law for the apprehension, trial, or prosecution, and fixing the punishment, of those persons who have broken or violated, or are supposed to have broken or violated, the laws prescribed for the regulation of the conduct of the people of the community, and who have thereby laid themselves liable to fine or imprisonment or other punishment. 4 Amer. & Eng. Enc. Law, 730.

Criminal Proceeding

One instituted and conducted for the purpose either of preventing the commission of crime, or for fixing the guilt of a crime already committed and punishing the offender; as distinguished from a "civil" proceeding, which is for the redress of a private injury. Mossew v. United States, C.C.A. N.Y., 266 F. 18, 22, 11 A.L.R. 1261. Strictly, a "criminal proceeding" means some step taken before a court against some person or persons charged with some violation of the criminal law. McGoldrick v. Downs, 184 Misc. 168, 53 N.Y.S.2d 333, 336.

Criminal Process

Process which issues to compel a person to answer for a crime or misdemeanor. Mowlan v. State, 197 Ind. 517, 151 N.E. 416, 417. Also process issued to aid in the detection or suppression of crime, such as search warrants—the primary purpose of the search being to obtain evidence for use in a criminal prosecution. Sugar Valley Land Co. v. Johnson, 17 Ala.App. 409, 85 So. 871, 874.

Criminal Prosecution

An action or proceeding instituted in a proper court on behalf of the public, for the purpose of securing the conviction and punishment of one accused of crime. Harger v. Thomas, 44 Pa. 128, 84 Am.Dec. 422; Ex parte Pepper, 185 Ala. 284, 64 So. 112, 113; State v. District Court of Fifth Judicial Dist. in and for Madison County, 53 Mont. 350, 165 P. 294, 296; McGoldrick v. Downs, 184 Misc. 168, 53 N.Y.S.2d 333, 336. A prosecution in a court of justice, in name of the Government, against one or more individuals accused of crime. United States v. Safeway Stores, Tex., C.C.A.Kan., 140 F.2d 834, 839.

As to criminal "Conspiracy," "Contempt," "Information," "Jurisdiction," "Negligence," "Operation," see those titles.

CRIMINAL JURISDICTION. That which exists for the trial and punishment of criminal offenses; the authority by which judicial officers take cognizance of and decide criminal cases. Ellison v.

State, 125 Ind. 492, 24 N.E. 739; In re City of Buffalo, 139 N.Y. 422, 34 N.E. 1103.

Criminal law

That branch or division of law which treats of crimes and their punishments. In the plural—"criminal laws"—the term may denote the laws which define and prohibit the various species of crimes and establish their punishments. U. S. v. Reisinger, 128 U.S. 398, 9 S.Ct. 99, 32 L.Ed. 480; Washington v. Dowling, 92 Fla. 601, 109 So. 588, 591.

CRIMINAL LAW AMENDMENT ACT. This act was passed in 1871, 34 & 35 Vict. c. 32, to prevent and punish any violence, threats, or molestation, on the part either of master or workmen, in the various relations arising between them. 4 Steph. Comm. 241.

CRIMINAL LAW CONSOLIDATION ACT. The statutes 24 & 25 Vict. cc. 94-100, passed in 1861, for the consolidation of the criminal law of England and Ireland. 4 Steph. Comm. 297. These important statutes amount to a codification of the modern criminal law of England.

CRDIINAL LETTERS. In Scotch law. A process used as the commencement of a criminal proceeding, in the nature of a summons issued by the lord advocate or his deputy. It resembles a criminal information at common law.

CRIMINAL LIBEL. A libel which is punishable criminally; one which tends to excite a breach of the peace. 3 Greenl. Ev. § 164; Walker v. Wickens, 49 Kan. 42, 30 P. 181; Kennerly v. Hennessy, 68 Fla. 138, 66 So. 729, 19 A.L.R. 1468. The malicious defamation of a person made public by any printing or writing tending to provoke him to wrath and to deprive him of the benefits of public confidence and social intercourse.

CRIMINALIST. One versed in criminal law, one addicted to criminality, and, also, a psychiatrist dealing with criminality. People v. Taylor, 312 P.2d 731, 734, 152 C.A.2d 29; Douglas v. State, 163 So.2d 477, 486, 42 Ala.App. 314.

CRIMINALITER. Lat. Criminally. This term is used, in distinction or opposition to the word *"civiliter,"* civilly, to distinguish a criminal liability or prosecution from a civil one.

CRIMINATE. To charge one with crime; to furnish ground for a criminal prosecution; to expose a person to a criminal charge. A witness cannot be compelled to answer any question which has a tendency to *criminate* him. Stewart v. Johnson, 18 N.J.Law, 87; Kendrick v. Comm., 78 Va. 490.

CRIMINOLOGY. The science which treats of crimes and their prevention and punishment.

CRIMP. One who decoys and plunders sailors under cover of harboring them. Wharton.

CRIPPLING. The word "crippling" is equivalent of words "physical disability" and is defined as to deprive of use of limbs, particularly of leg or foot, to deprive of strength, activity or capability for service or use and to disable. People v. Lockwood, 308 Mich. 618, 14 N.W.2d 517, 518; Baker v. Chicago, B. & Q. R. Co., 327 Mo. 986, 39 S.W.2d 535, 545.

CRITICISM. Permitted "criticism" as distinguished from "defamation" deals only with such things as invite public comment, and does not follow a public man into his private life, and pry into his domestic concerns. Devany v. Shulman, 184 Misc. 613, 53 N.Y.S.2d 401, 403.

CRO, CR00. In old Scotch law. A weregild. A composition, satisfaction, or assythment for the slaughter of a man.

CROCIA. The *crosier,* or pastoral staff.

CROCIARIUS. A cross-bearer, who went before the prelate. Wharton.

CROCKARDS, CROCARDS. A foreign coin of base metal, prohibited by statute 27 Edw. I. St. 3, from being brought into the realm. 4 BL Comm. 98; Crabb, Eng. Law, 176.

CROFT. A little close adjoining a dwelling-house, and inclosed for pasture and tillage or any particular use. Jacob. A small place fenced off in which to keep farm-cattle. Spelman. The word is now entirely obsolete.

CROISES. Pilgrims; so called as wearing the sign of the *cross* on their upper garments. Britt. c. 122. The knights of the order of St. John of Jerusalem, created for the defense of the pilgrims. Cowell; Blount.

CROITEIR. A crofter; one holding a croft

CROOK. A person given to crooked or fraudulent practices, a swindler, sharper, thief, forger, or the like. Rubenstein v. Lee, 56 Ga.App. 49, 192 S.E. 85, 87; Sinclair Refining Co. v. Fuller, 190 Ark. 426, 79 S.W.2d 736, 739. Term "crook" has been defined as a professional rogue; a criminal; or one consorting with criminals; a person recognized by the authorities as belonging to the criminal class; swindler; sharp; cheat. Gaare v. Melbostad, 186 Minn. 96, 242 N.W. 466, 467.

CROOKED. Deviating from rectitude or uprightness; not straightforward; dishonest; wrong; perverse. A "crook" is a dishonest person; one who is crooked in conduct; a tricky or underhand schemer; a thief or swindler. Villemin v. Brown, 193 App.Div. 777, 184 N.Y.S. 570, 571; Pandolfo v. Bank of Benson, C.C.A.Ariz., 273 F. 48, 51.

CROP. The products of the harvest; emblements. Mutual Fire Insurance Co. v. Dehaven, Pa., 5 A. 65; Verbeck v. Peters, 170 Iowa, 610, 153 *N.W.* 215, 216. Such products of the soil as, are annually planted, severed, and saved by manual labor, as cereals, vegetables, grass maturing for harvest or harvested, etc., but not grass on lands used for pasturage. Moore v. Hope Natural Gas

Co., 76 W.Va. 649, 86 S.E. 564, 567. In its more general signification, means all products of the soil that are grown and raised annually and gathered during a single season. In this sense the term includes fructus industriales and fructus naturales. The word is also used, however, in a more restricted sense, as synonymous with fructus industriales or emblements. Etymology of word "crop" appears to be from the Saxon "crop" or "cropp," which signified a cluster of ears of corn or grapes; another derivation is from the Welch "cropiad," which meant a fathering or taking hold of. It is from this derivation that the word has been held to mean only products after they have been severed from the soil. At times a distinction has been drawn between fructus industriales and fructus naturales. Kennedy v. Spalding, 143 Kan. 76, 53 P.2d 804, 806; Miethke v. Pierce County, 173 Wash. 381, 23 P.2d 405; Weddle v. Parrish, 135 Or. 345, 295 P. 454, 455.

In a broader sense, any product of the soil. Ellis, McKinnon & Brown v. Hopps, 30 Ga.App. 453, 118 S.E. 583; Buchanan v. Jencks, 38 R.I. 443, 96 A. 307, 309, 2 A.L.R. 986.

CROPPER. One who, having no interest in the land, works it in consideration of receiving a portion of the crop for his labor. Wood v. Garrison, 23 Ky.Law Rep. 295, 62 S.W. 728; Maltbie v. Olds, 88 Conn. 633, 92 A. 403, 405; Davis v. State, 84 Tex. Cr.R. 282, 206 S.W. 690; Empire Gas & Fuel Co. v. Denning, 128 Okl. 145, 261 P. 929, 930.

The difference between a tenant and a cropper is: A tenant has an estate in the land for the term, and, consequently, he has a right of property in the crops. Until division, the right of property and of possession in the whole is the tenant's. A cropper has no estate in the land; and, although he has in some sense the possession of the crop, it is the possession of a servant only, and is, in law, that of the landlord, who must divide off to the cropper his share. Harrison v. Ricks, 71 N.C. 7; O'Brien v. Webb, D.C.Cal., 279 F. 117, 120; Cook-Reynolds Co. v. Wilson, 67 Mont. 147, 214 P. 1104, 1105; Halsell v. First Nat. Bank, 109 Okl. 220, 235 P. 532, 533; Gibbons v. Huntsinger, 105 Mont. 562, 74 P.2d 443.

CROSS. A mark made by persons who are unable to write, to stand instead of a signature. A mark usually in the form of an X, by which voters are commonly required to express their selection. There are four principal forms of the cross: The St. Andrew's cross, which is made in the form of an X ; the Latin cross, t, as used ih the crucifixion; St. Anthony's cross, which is made in the form of a T; and the Greek cross, +, which is made by the intersection at right angles of lines at their center point. Hunt v. Campbell, 19 Ariz. 254, 169 P. 596, 610.

As an adjective, the word is applied to various demands and proceedings which are connected in subject-matter, but opposite or contradictory in purpose or object.

As a verb it means to pass or extend from one side to the other, as to cross a stream. People v. Hawkins, 51 Cal.App.2d Supp. 781, 124 P.2d 691, 692.

As to cross "Appeal," "Bill," "Complaint," "Remainder," "Rules," see those titles.

CROSS-ACTION. An action brought by one who is defendant in a suit against the party who is plaintiff in such suit, upon a cause of action growing out of the same transaction which *is* there in controversy, whether it be a contract or tort. An independent suit brought by defendant against plaintiff. National Stock Yards Nat. Bank v. Valentine, Tex.Civ.App., 39 S.W.2d 907, 908.

CROSS-CLAIM. A "cross-claim" is one brought by a defendant against a plaintiff in the same action or against a codefendant or both concerning matters in question in the original petition, and its purposes are to discover facts in aid of defense, to bring in new matter in aid of defense, to obtain some affirmative relief concerning matters in issue, to obtain full relief for all parties and a complete determination of all controversies arising out of matters alleged in original petition, and to have affirmative relief against either plaintiff or codefendant in the nature of an original petition. Farr v. Detroit Trust Co., C.C.A.Mich., 116 F.2d 807, 811.

CROSS-DEMAND. Where a person against whom a demand is made by another, in his turn makes a demand against that other, these mutual demands are called "cross-demands." A *set-off* is a familiar example. Musselman v. Galligher, 32 Iowa, 383.

CROSS-ERRORS. Errors being assigned by the respondent in a writ of error, the errors assigned on both sides are called "cross-errors."

CROSS-EXAMINATION. In practice. The examination of a witness upon a trial or hearing, or upon taking a deposition, by the party opposed to the one who produced him, upon his evidence given in chief, to test its truth, to further develop it, or for other purposes.

CROSS-LAY. The winding of the outer strands of a rope in a reverse direction to the inner strands, the "lay" of a strand of rope being the length of rope within which such strand makes one complete turn. Macomber & Whyte Rope Co. v. Hazard Mfg. Co., C.C.A.N.Y., 211 F. 976, 977.

CROSS-SALE. Where a floor broker, holding orders from different customers to buy and sell on the same terms, cries out the transaction and makes the sale and purchase to himself at the price shown by the last sale shown on the exchange, the transaction is called a "cross-sale or trade," and is illegal under rules of exchange, requiring two brokers to every purchase or sale. Cohen v. Rothschild, 182 App.Div. 408, 169 N.Y.S. 659, 664.

CROSSED CHECK. See Check.

CROSSING. A portion of a street over which pedestrians may lawfully cross from one side to the other. Under Laws N.J.1915, P.L. p. 285, § 1, defining crossings to be all duly indicated crossings, marked by pavement or otherwise, at intersection of streets, the most direct route across the street from curb to curb is a "crossing," where

no paved crossing is there necessary. Ferris v. McArdle, 92 N.J.Law, 580, 106 A. 460, 461.

With reference to railroads, that portion of the right of way covered by intersection with a street or highway. International-Great Northern R. Co. v. Mallard, Tex.Civ.App., 262 S.W. 789, 791. In a broader sense, the term includes embankments constructed as necessary approaches to a railroad track, St. Louis, I. M. & S. Ry. Co. v. Smith, 118 Ark. 72, 175 S.W. 415, 416, and approaches or embankments reasonably necessary to enable crossings or bridges to be used, Payne v. Stockton, 147 Ark. 598, 229 S.W. 44, 47. For "Farm Crossing", see that title.

CROWD. "Crowd" is indefinite, since difference in time and place may shape its meaning, but there is always implied in the word numbers with reference to the hour and location. People, on Complaint of Liroff, v. Phillips, 245 N.Y. 401, 157 N.E. 508, 509.

CROWN. The sovereign power in a monarchy, especially in relation to the punishment of crimes. "Felony is an offense of the crown." Finch, Law, b. 1, c. 16.

An ornamental badge of regal power worn on, the head by sovereign princes. The word is frequently used when speaking of the sovereign himself, or the rights, duties, and prerogatives belonging to him. Also a silver coin of the value of five shillings. Wharton.

The facings and backings made to be sold to dentists to be set by them with appropriate fastenings in the jaws of their patients, when so in place are commonly called "crowns" or "artificial crowns." S. S. White Dental Mfg. Co. v. Dental Co. of America, D.C.Pa., 263 F. 719, 720.

Ship's crown is convex arc of vessel's deck from side to side. The Indien, C.C.A.Cal., 71 F.2d 752, 757.

CROWN CASES. In English law. Criminal prosecutions on behalf of the crown, as representing the public; causes in the criminal courts.

CROWN CASES RESERVED. In English law. Questions of law arising in criminal trials at the assizes, (otherwise than by way of demurrer,) and not decided there, but reserved for the consideration of the court of criminal appeal.

CROWN COURT. In English law. The court in which the crown cases, or criminal business, of the assizes is transacted.

CROWN DEBTS. In English law. Debts due to the crown, which are put, by various statutes, upon a different footing from those due to a subject.

CROWN LANDS. The demesne lands of the crown. In England and Canada, lands belonging to the sovereign personally or to the government or nation, as distinguished from such as have passed into private ownership.

CROWN LAW. Criminal law in England is sometimes so termed, the crown being always the prosecutor in criminal proceedings. 4 Bl.Comm. 2.

CROWN OFFICE. The criminal side of the court of king's bench. The king's attorney in this court is called "master of the crown office." 4 Bl.Comm. 308.

CROWN OFFICE IN CHANCERY. One of the offices of the English high court of chancery, now transferred to the high court of justice. The principal official, the clerk of the crown, is an officer of parliament, and of the lord chancellor, in his non-j udicial capacity, rather than an officer of the courts of law.

CROWN PAPER. A paper containing the list of criminal cases, which await the hearing or decision of the court, and particularly of the court of king's bench; and it then includes all cases arising from informations *quo warranto,* criminal informations, criminal cases brought up from inferior courts by writ of *certiorari,* and cases from the sessions. Brown.

CROWN SIDE. The criminal department of the court of king's bench; the civil department or branch being called the "plea side." 4 Bl.Comm. 265.

CROWN SOLICITOR. In England, the solicitor to the treasury acts, in state prosecutions, as solicitor for the crown in preparing the prosecution. In Ireland there are officers called "crown solicitors" attached to each circuit, whose duty it is to get up every case for the crown in criminal prosecutions. They are paid by salaries. There is no such system in England, where prosecutions are conducted by solicitors appointed by the parish, or other persons bound over to prosecute by the magistrates on each committal; but in Scotland the still better plan exists of a crown prosecutor (called the "procurator-fiscal," and being a subordinate of the lord-advocate) in every county, who prepares every criminal prosecution. Wharton.

CROWNER. In old Scotch law. Coroner; a coroner. "Crowner's quest," a coroner's inquest.

CROY. In old English law. Marsh land. Blount.

CRUCE SIGNATI. In old English law. Signed or marked with a cross. Pilgrims to the holy land, or crusaders; so called because they wore the sign of the cross upon their garments. Spelman.

CRUDE. A flexible term depending largely on context. In natural state; raw; unrefined; not artificially altered; unfinished. U. S. v. Richard & Co., 8 Ct.Cust.App. 304, 305; Nortmann-Duffke v. Federal Crushed Stone Co., 167 Minn. 333, 209 N.W. 17, 18; Ishimitsu Co. v. U. S., 12 Ct.Cust.App. 477, 479.

CRUEL AND UNUSUAL PUNISHMENT. See Punishment.

CRUELTY. The intentional and malicious infliction of physical suffering upon living creatures, particularly human beings; or, as applied to the latter, the wanton, malicious, and unnecessary infliction of pain upon the body, or the feelings and emotions; abusive treatment; inhumanity;

outrage. Jacobs v. Jacobs, 95 Conn. 57, 110 A. 455, 456. $

Chiefly used in the law of divorce, in such phrases as "cruel and abusive treatment," "cruel and barbarous treatment," or "cruel and inhuman treatment," as to the meaning of which, and of "cruelty" in this sense, see Rudnick v. Rudnick, 288 Mass. 256, 192 N.E. 501; Martin v. Martin, 154 Pa.Super. 313, 35 A.2d 546, 548; Price v. Price, 181 Miss. 539, 179 So. 855, 857; Campbell v. Campbell, 129 Pa.Super. 106, 194 A. 760, 763; Avdoyan v. Avdoyan, 265 App.Div. 763, 40 N.Y.S.2d 665, 668; Lowry v. Lowry, 170 Ga. 349, 153 S.E. 11, 14, 70 A.L.R. 488.

For "Extreme and Repeated Cruelty," see that title.

*As between husband and wife.* Those acts which affect the life, the health, or even the comfort, of the party aggrieved and *give* a reasonable apprehension of bodily hurt, are called "cruelty." What merely wounds the feelings Is seldom admitted to be cruelty, unless the act be accompanied with bodily injury, either actual or menaced. Mere austerity of temper, petulance of manners, rudeness of language, a want of civil attention and accommodation, even occasional sallies of passion, will not amount to legal cruelty; a *fortiori,* the denial of little indulgences and particular accommodations, which the delicacy of the world is apt to number among its necessaries, is not cruelty. The negative descriptions of cruelty are perhaps the best, under the infinite variety of cases that may occur, by showing what is not cruelty. Evans v. Evans, 1 Hagg.Const. 35; Westmeath v. Westmeath, 4 Eng.Ecc. 238, 311, 312.

Cruelty includes both willfulness and malicious temper of mind with which an act is done, as well as a high degree of pain inflicted. Acts merely accidental, though they inflict great pain, are not "cruel," in the sense of the word as used in statutes against cruelty. Comm. v. McClellan, 101 Mass. 34.

### Cruelty to Animals

The infliction of physical pain, suffering, or death upon an animal, when not necessary for purposes of training or discipline or (in the case of death) to procure food or to release the animal from incurable suffering, but done wantonly, for mere sport, for the indulgence of a cruel and vindictive temper, or with reckless indifference to its pain. State v. Porter, 112 N.C. 887, 16 S.E. 915; State v. Bosworth, 54 Conn. 1, 4 A. 248; McKinne v. State, 81 Ga. 164, 9 S.E. 1091; Waters v. People, 23 Colo. 33, 46 P. 112, 33 L.R.A. 836,

### Legal Cruelty

See Legal Cruelty.

CRUISE. A voyage undertaken for a given purpose; a voyage for the purpose of making captures *jure belli.* The Brutus, 2 Gall. 538, Fed. Cas.No.2,060.

A voyage or expedition in quest of vessels or fleets of the enemy which may be expected to sail in any particular track at a certain season of the year. The region in which these cruises are performed is usually termed the "rendezvous," or "cruising latitude." Bouvier.

A report of a timber surveyor showing the character and amount of timber in a stand. Jones v. United States, C.C.A.Or., 265 F. 235, 239,

CRUSH. To break by means of pressure. Yagunchok v. Rutledge, 219 Mich. 82, 188 N.W. 412, 413.

It has been defined to mean to compress or bruise between two hard bodies; to squeeze or force by pressure so as to destroy the natural condition, shape, or integrity of the parts, or to force together into a mass. Atlantic Oil Producing Co. v. Malone, 152 Okl. 68, 3 P.2d 874, 875.

CRY. To call out aloud; to proclaim; to publish; to sell at auction. "To cry a tract of land." Carr v. Gooch, 1 Wash., Va., 335 (260).

A clamor raised in the pursuit of an escaping felon. 4 Bl.Comm. 293. See Hue and Cry.

CRY DE PAIS, or CRI DE PAIS. The hue and cry raised by the people in ancient times, where a felony had been committed and the constable was absent.

CRYER. An auctioneer. Carr v. Gooch, 1 Wash., Va., 337, (262.) One who calls out aloud; one who publishes or proclaims. See Crier.

CRYPTA. A chapel or oratory underground, or under a church or cathedral. Du Cange.

CUCKING–STOOL. An engine of correction for common scolds, which in the Saxon language is said to signify the scolding-stool, though now it is frequently corrupted into *ducking-stool,* because the judgment was that, when the woman was placed therein, she should be plunged in the water for her punishment. It was also variously called a "trebucket," "tumbrel," or "castigatory." 3 Inst. 219; 4 Bl.Comm. 169; Brown. James v. Comm., 12 Serg. & R., Pa., 220.

CUCKOLD. A man whose wife is unfaithful; the husband of an adulteress. It is explained that the word alludes to the habit of the female cuckold, which lays her eggs in the nests of other birds to be hatched by them. To make a cuckold of a man is to seduce his wife. Hall v. Huffman, 159 Ky. 72, 166 S.W. 770.

CUEILLETTE. A term of French maritime law. See A Cueillette.

CUI ANTE DIVORTIUM (L. Lat. The full phrase was, *Cui ipsa ante divortium contradicere non potuit,* whom she before the divorce could not gainsay). A writ which anciently lay in favor of a woman who had been divorced from her husband, to recover lands and tenements which she had in fee-simple, fee-tail, or for life, from him to whom her husband had aliened them during marriage, when she could not gainsay it; Fitzh.N.B. 240; 3 Bla.Com. 183, n.; Stearns, Real Act. 143; Booth, Real Act. 188. Abolished in 1833.

CUI BONO. For whose good; for whose use or benefit. *"Cui bono* is ever of great weight in all agreements." Parker, C. J., 10 Mod. 135. Sometimes translated, for what good, for what useful purpose.

CUI IN VITA (L. Lat. The full phrase was, Cui *in vita sua ipsa contradicere* non *potuit,* whom in

his lifetime she could not gainsay). 'A writ of entry which lay for a widow against a person to whom her husband had in his lifetime aliened her lands. Fitzh.N.B. 193. It was a method of establishing the fact of death, being a trial with witnesses, but without a jury. The object of the writ was to avoid a judgment obtained against the husband by confession or default. It is obsolete in England by force of 32 Hen. VIII, c. 28, § 6. See 6 Co. 8, 9. As to its use in Pennsylvania, see 3 Binn.Appx.; Rep.Comm. on Penn.Civ.Code, 1835, 90. Abolished in England, 1833. Blackstone is said to have shown little knowledge of its history; Thayer, Evidence.

CUT JURISDICTIO DATA EST, EA QUOQUE CONCESSA ESSE VIDENTUR, SINE QUIBUS JURISDICTIO EXPLICARI NON POTEST. To whomsoever a jurisdiction is given, those things also are supposed to be granted, without which the jurisdiction cannot be exercised. Dig. 2, 1, 2. The grant of jurisdiction implies the grant of all powers necessary to its exercise. 1 Kent, Comm. 339.

CUI JUS EST DONANDI, EIDEM ET VENDENDI ET CONCEDENDI JUS EST. He who has the right of giving has also the right of selling and granting. Dig. 50, 17, 163.

CUILIBET *IN* ARTE SUA PERITO EST CREDENDUM. Any person skilled in his peculiar art or profession is to be believed, *[i. e.,* when he speaks of matters connected with such art.] Co. Litt. 125a. Credence should be given to one skilled in his peculiar profession. Broom.Max. 932; 1 Bla.Com. 75; Phill.Ev.Cowen & H. notes, 759; 1 Hagg.Ecc. 727; 11 Cl. & F. 85.

CUILIBET LICET JURI PRO SE INTRODUCTO RENUNCIARE. Any one may waive or renounce the benefit of a principle or rule of law that exists only for his protection.

CUI LICET GUOD MAJUS, NON DEBET QUOD MINUS EST NON LICERE. He who is allowed to do the greater ought not to be prohibited from doing the less. He who has authority to do the more important act ought not to be debarred from doing what is of less importance. 4 Coke 23.

CUICUNQUE ALIQUIS QUID CONCEDIT CONCEDERE VIDETUR ET ID, SINE QUO RES IPSA ESSE NON POTUIT. Whoever grants anything to another is supposed to grant that also without which the thing itself would be of no effect. 11 Co. 52; Broom, Max. 479; Hob. 234; Vaugh. 109; 11 Exch. 775; Shep.Touch. 89; Co.Litt. 56 a.

CUI PATER EST POPULUS NON HABET ILLE PATREM. He to whom the people is father has not a father. Co.Litt. 123.

CUIQUE IN SUA ARTE CREDENDUM EST. Everyone is to be believed in his own art. Dickinson v. Barber, 9 Mass. 227, 6 Am.Dec. 58.

CUJUS EST COMMODUM EJUS DEBET ESSE INCOMMODUM. Whose is the advantage, his also should be the disadvantage.

CUJUS EST DARE, EJUS EST DISPONERE, Wing.Max. 53. Whose it is to give, his it is to dispose; or, as Broom says, "the bestower of a gift has a right to regulate its disposal." Broom, Max. 459, 461, 463, 464.

CUJUS EST DIVISIO, ALTERIUS EST ELECTIO. Whichever [of two parties] has the division, [of an estate,] the choice [of the shares] is the other's. Co.Litt. 166b. In partition between coparceners, where the division is made by the eldest, the rule in English law is that she shall choose her share last. Id.; 2 Bl.Comm. 189; 1 Steph. Comm. 323.

CUJUS EST DOMINIUM EJUS EST PERICULUM. The risk lies upon the owner of the subject. Tray.Lat.Max. 114.

CUJUS EST INSTITUERE, EJUS EST ABROGARE. Whose right it is to institute, his right it is to abrogate. Broom, Max. 878, note.

CUJUS EST SOLUM EJUS EST USQUE AD C4ELUM. Whose is the soil, his it is up to the sky. Co.Litt. 4a. He who owns the soil, or surface of the ground, owns, or has an exclusive right to, everything which is upon or above it to an indefinite height. 9 Coke 54; Shep.Touch. 90; 2 Bl. Comm. 18; 3 Bl.Comm. 217; Broom.Max. 395.

CUJUS EST SOLUM, EJUS EST USQUE AD C(ELUM ET AD INFEROS. To whomsoever the soil belongs, he owns also to the sky and to the depths. The owner of a piece of land owns everything above and below it to an indefinite extent. Co.Litt. 4; Shell Oil Co. v. Manley Oil Corporation, D.C.I11., 37 F.Supp. 289, 292.

CUJUS JURIS *(i. e.,* JURISDICTIONIS) EST PRINCIPALE, EJUSDEM JURIS ERIT ACCESSORIUM. 2 Inst. 493. An accessory matter is subject to the same jurisdiction as its principal.

CUJUS PER ERROREM DATI REPETITIO EST, EJUS CONSULTO DATI DONATIO EST. He who gives a thing by mistake has a right to recover it back; but, if he gives designedly, it *is a* gift. Dig. 50, 17, 53.

CUJUSQUE REI POTISSIMA PARS EST PRINCIPIUM. The chiefest part of everything is the beginning. Dig. 1, 2, 1; 10 Coke, 49a.

CUL DE SAC. (Fr. the bottom of a sack.) A blind alley; a street which is open at one end only. Bartlett v. Bangor, 67 Me. 467; Talbott v. Railroad Co., 31 Grat., Va., 691; Hickok v. Plattsburg, 41 Barb., N.Y., 135; Beckham v. State, 64 Cal.App.2d 487, 149 P.2d 296, 300.

CULAGIUM. In old records. The laying up a ship in a dock, in order to be repaired. Cowell; Blount.

CULPA. Lat. A term of the civil law, meaning fault, neglect, or negligence. There are three degrees of *culpa,—lata culpa,* gross fault or neglect; *levis culpa,* ordinary fault or neglect; *levissima culpa,* slight fault or neglect,—and the definitions

of these degrees are precisely the same as those in our law. Story, Bailm. § 18. This term is to be distinguished from *dolus,* which means fraud, guile, or deceit.

CULPA CARET QUI SCIT SED PROHIBERE NON POTEST. He is clear of blame who knows, but cannot prevent. Dig. 50, 17, 50.

CULPA EST IMMISCERE SE REL AD SE NON PERTINENTI. 2 Inst. 208. It is a fault for any one to meddle in a matter not pertaining to him.

CULPA LATA DOLO ZEQUIPARATUR. Gross negligence is held equivalent to intentional wrong.

CULPA TENET [TENEAT] SUOS AUCTORES. Misconduct binds [should bind] its own authors. It is a never-failing axiom that every one is accountable only for his own delicts. Ersk.Inst. 4, 1, 14.

CULPABILIS. Lat. In old English law. Guilty. *Culpabilis de* intrusione,—guilty of intrusion. Fleta, lib. 4, c. 30, § 11. *Non culpabilis,* (abbreviated to *non cul.)* In criminal procedure, the plea of "not guilty." *See* Culprit.

CULPABLE. Blamable; censurable; involving the breach of a legal duty or the commission of a fault. The term is not necessarily equivalent to "criminal," for, in present use, and notwithstanding its derivation, it implies that the act or conduct spoken of is reprehensible or wrong but not that it involves malice or a guilty purpose. "Culpable" in fact connotes fault rather than guilt. Railway Co. v. Clayberg, 107 Ill. 651; Cain v. State, 55 Ga. App. 376, 190 S.E. 371, 374.

As to culpable "Homicide," "Ignorance," "Neglect," and "Negligence," "Wantonness," see those titles.

It also means that which is deserving of moral blame. Mercury Motor Transport v. State ex rel. Motor Vehicle Com'r, 197 Miss. 387, 21 So.2d 25, 28.

CULPA NENA PAR ESTO. DEENA AD MENSURAM DELICTI STATUENDA EST. Let the punishment be proportioned to the crime. Punishment is to be measured by the extent of the offense.

CULPRIT. A person who is indicted for a criminal offense, but not yet convicted. It is not, however, a technical term of the law; and in its vernacular usage it seems to imply only a light degree of censure or moral reprobation.

Blackstone believes it an abbreviation of the old forms of arraignment, whereby, on the prisoner's pleading not guilty, the clerk would respond, *"culpabilis, prit," e.,* he is guilty and the crown is ready. It was (he says) the viva *voce* replication, by the clerk, on behalf of the crown, to the prisoner's plea of non *culpabilis; prit* being a technical word, anciently in use in the formula of joining issue. 4 Bl.Comm. 339.

But a more plausible explanation is that given by Donaldson, (cited Whart.Lex.,) as follows: The clerk asks the prisoner, "Are you guilty, or not guilty?" Prisoner "Not guilty." Clerk, *"Qu'il paroit,* [may it prove so.] How will you be tried?" Prisoner, "By God and my country." These words being hurried over, came to sound, "culprit, how will you be tried?" The ordinary derivation is from *culpa.*

CULRACH. In old Scotch law. A species of pledge or cautioner, (Scottice *back borgh,)* used in cases of the replevin of persons from one man's court to another's. Skene.

CULTIVATE. The word "cultivate" means to till, prepare for crops, manure, plow, dress, sow and reap, manage and improve in husbandry. Miller v. Richey, Tex.Civ.App., 173 S.W.2d 490, 493.

CULTIVATED. A field on which a crop of wheat is growing is a cultivated field, although not a stroke of labor may have been done in it since the seed was put in the ground, and it is a cultivated field after the crop is removed. It is, strictly, a cultivated piece of ground. Combs v. Rockingham County Com'rs, 170 N.C. 87, 86 S.E. 963, 964; Angus Cattle Co. v. McLeod, 98 Neb. 108, 152 N.W. 322, 323.

CULTIVATOR. A cropper, which see. Pearson v. Lafferty, 197 Mo.App. 123, 193 S.W. 40, 41.

CULTURA. A parcel of arable land. Blount.

CULVERTAGE. In old English law. A base kind of slavery. The confiscation or forfeiture which takes place when a lord seizes his tenant's estate. Blount; Du Cange.

CUM ACTIO FUERIT MERE CRIMINAL'S, INSTITUI POTERIT AB INITIO CRIMINALITER VEL CIVILITER. When an action is merely criminal, it can be instituted from the beginning either criminally or civilly. Bract. 102.

CUM ADSUNT TESTIMONIA RERUM, QUID OPUS EST VERBIS? When the proofs of facts are present, what need is there of words? 2 Bulst. 53.

CUM ALIQUIS RENUNCIAVERIT SOCIETATI, SOLVITUR SOCIETAS. When any partner renounces the partnership, the partnership is dissolved. Tray. Lat. Max. 118.

CUM CONFITENTE SPONTE MITIUS EST AGENDUM. 4 Inst. 66. One confessing willingly should be dealt with more leniently.

CUM COPULA. Lat. With copulation, *i. e.,* sexual intercourse. Used in speaking of the validity of a marriage contracted "per verba de futuro cum copula," that is, with words referring to the future (a future intention to have the marriage solemnized) and consummated by sexual connection.

CUM DE LUCRO DUORUM QUAERITUR, MELIOR EST CAUSA POSSIDENTIS. When the question is as to the gain of two persons, the cause of him who is in_ possession is the better. Dig. 50, 17, 126.

CUM DUO INTER SE PUGNANTIA REPERIUNTUR IN TESTAMENTO, ULTIMUM RATUM EST. Where two things repugnant to each other. are found in a will, the last shall stand. Co. Litt. 112b; Shep. Touch. 451; Broom, Max. 583.

CUM DUO JURA CONCURRUNT IN UNA PERSONA ZEQUUM EST AC SI ESSENT IN DUOBUS. When two rights meet in one person, it is the same as if they were in two persons.

CUM GRANO SALIS. (With a grain of salt.) With allowance for exaggeration.

CUM IN CORPORE DISSENTITUR, APPARET NULLAM ESSE ACCEPTIONEM. When there is a disagreement in the substance, it appears that there is no acceptance. Gardner v. Lane, 12 Allen, Mass., 44.

CUM IN TESTAMENTO AMBIGUE AUT ETIAM PERPERAM SCRIPTUM EST BENIGNE INTERPRETARI ET SECUNDUM ID QUOD CREDIBILE EST COGITATUM CREDENDUM EST. Dig. 34, 5, 24. Where an ambiguous, or even an erroneous, expression occurs in a will, it should be construed liberally, and in accordance with the testator's probable meaning. Broom, Max. 568.

CUM LEGITEVIZE NUPTLE FACTIE SUNT, PATREM LIBERI SEQUUNTUR. Children born under a legitimate marriage follow the condition of the father.

CUM ONERE. With the burden; subject to an incumbrance or charge. What is taken *cum onere* is taken subject to an existing burden or charge.

CUM PAR DELICTUM EST DUORUM, SEMPER ONERATUR PETITOR ET MELIOR HABETUR POSSESSORIS CAUSA. Dig. 50, 17, 154. When both parties are in fault the plaintiff must always fail, and the cause of the person in possession be preferred.

CUM PERA ET LOCULO. With satchel and purse. A phrase in old Scotch law.

CUM PERTINENTIIS. With the appurtenances. Bract. fol. 73b.

CUM PRIVILEGIO. The expression of the monopoly of Oxford, Cambridge, and the royal printers to publish the Bible.

CUM QUOD AGO NON VALET UT AGO, VALEAT QUANTUM VALERE POTEST. 4 Kent, Comm. 493. When that which I do is of no effect as I do it, it shall have as much effect as it can; i. *e.,* in some other way.

CUM TESTAMENTO ANNEXO. L. Lat. With the will annexed. A term applied to administration granted where a testator makes an incomplete will, without naming any executors, or where he names incapable persons, or where the executors named refuse to act. If the executor has died, an administrator de *bonis non cum testamento annexo* (of the goods not [already] administered upon with the will annexed) is appointed. Often abbreviated d. b. n. c. t. a. 2 Bl. Comm. 503, 504.

CUMULATIVE. Additional; heaping up; increasing; forming an aggregate. The word signifies that two things are to be added together, instead of one being a repetition or in substitution of the other. People v. Superior Court, 10 Wend., N.Y., 285; Regina v. Eastern Archipelago, Co., 18 Eng. Law & Eq. 183.

As to cumulative "Dividend," "Legacy," "Punishment" and "Sentences," see those titles.

CUMULATIVE EVIDENCE. Additional or corroborative evidence to the same point. That which goes to prove what has already been established by other evidence. Glidden v. Dunlap, 28 Me. 383; Parker v. Hardy, 24 Pick., Mass., 248; Waller v. Graves, 20 Conn. 310; Roe v. Kalb, 37 Ga. 459; Purcell Envelope Co. v. United States, 48 Ct.C1. 66, 73.

All evidence material to the issue, after any such evidence has been given, is in a certain sense cumulative; that is, is added to what has been given before. It tends to sustain the issue. But cumulative evidence, in legal phrase, means evidence from the same or a new witness, simply repeating, in substance and effect, or adding to, what has been before testified to. Parshall v. Klinck, 43 Barb., N.Y., 212. Evidence is not cumulative merely because it tends to establish the same ultimate or *principally controverted* fact. Cumulative evidence is additional evidence of the same kind to the same point. Able v. Frazier, 43 Iowa, 177; Harlan v. Texas Fuel & Supply Co., Tex.Civ.App., 160 S.W. 1142, 1146.

### Cumulative Offense

One which can be committed only by a repetition of acts of the same kind but committed on different days. The offense of being a "common seller" of intoxicating liquors is an example. Wells v. Corn., 12 Gray., Mass., 328.

### Cumulative Remedy

A remedy created by statute in addition to one which still remains in force. Railway Co. v. Chicago, 148 Ill. 141, 35 N.E. 881; State v. Barboglio, 63 Utah, 432, 226 P. 904, 907; Philip Levy & Co. v. Davis, 115 Va. 814, 80 S.E. 791, 794; Wulff-Hansen & Co. v. Silvers, Cal.App., 120 P.2d 677, 680.

### Cumulative Voting

A system of voting, by which the elector, having a number of votes equal to the number of officers to be chosen, is allowed to concentrate the whole number of his votes upon one person, or to distribute them as he may see fit. For example, if ten directors of a corporation are to be elected, then, under this system, the voter may cast ten votes for one person, or five votes for each of two persons, etc. It is intended to secure representation of a minority. Bridgers v. Staton, 150 N.C. 216, 63 S.E. 892; Chicago Macaroni Mfg. Co. v. Boggiano, 202 Ill. 312, 67 N.E. 17; Attorney General v. McVichie, 138 Mich. 387, 101 N.W. 552.

CUNADES. In Spanish law. Affinity; alliance; relation by marriage. Las Partidas, pt. 4, tit. 6, 1, 5.

CUNEATOR. A coiner. Du Cange. *Cuneare,* to coin. *Cuneus,* the die with which to coin. *Cuneata,* coined. Du Cange; Spelman.

CUNNILINGUS. An act of sex perversion committed with the mouth and the female sexual organ. State v. Murry, 136 La. 253, 66 So. 963, 965.

CUNTEY-CUNTEY. In old English law. A kind of trial, as appears from Bract. lib. 4, tract 3, ca. 18, and tract 4, ca. 2, where it seems to mean, one by the ordinary jury.

CUR. A common abbreviation of *curia.*

CUBA. Lat. Care; charge; oversight; guardianship.

In the civil law a species of guardianship which commenced at the age of puberty (when the guardianship called "tutela" expired,) and continued to the completion of the twenty-fifth year. Inst. 1, 23, pr.; Id. 1, 25, pr. ; Hallifax, Civil Law, b. 1, c. 9.

CURAGULOS. One who takes care of a thing.

CURATE. In ecclesiastical law. Properly, an incumbent who has the *cure* of souls, but now generally restricted to signify the spiritual assistant of a rector or vicar in his *cure.* An officiating temporary minister in the English church, who represents the proper incumbent; being regularly employed either to serve in his absence or as his assistant, as the case may be. 1 Bl. Comm. 393; 3 Steph. Comm. 88; Brande.

Perpetual Curacy, the office of a curate in a parish where there is no spiritual rector or vicar, but where a clerk (curate) is appointed to officiate there by the impropriator. 2 Burn.Ecc.Law, 55. The church or benefice filled by a curate under these circumstances is also so called.

CURATEUR. In French law. A person charged with supervising the administration of the affairs of an emancipated minor, of giving him advice, and assisting him in the important acts of such administration. Duverger.

CURATIO. In the civil law. The power or duty of managing the property of him who, either on account of infancy or some defect of mind or body, cannot manage his own affairs. The duty of a curator or guardian. Calvin.

CURATIVE. Intended to cure (that is, to obviate the ordinary legal effects or consequences of) defects, errors, omissions or irregularities. Meigs v. Roberts, 162 N.Y. 371, 56 N.E. 838, 76 Am.St. Rep. 322.

The word is defined as relating to, or employed in, the cure of diseases; tending to cure; a remedy. State v. Stoddard, 215 Iowa, 534, 245 N.W. 273, 275, 86 A.L.R. 616.

Applied particularly to statutes, *a* "curative act" being a retrospective law passed in order to validate legal proceedings, the acts of public officers, or private deeds or contracts, which would otherwise be void for defects or irregularities or for want of conformity to existing legal requirements. Meigs v. Roberts, 162 N.Y. 371, 56 N.E. 838, 76 Am.St.Rep. 322; one intended to give legal effect to some past act or transaction which is ineffective because of neglect to comply with some requirement of law. Anderson v. Lehmkuhl, 119 Neb. 451, 229 N.W. 773, 777; Carle v. Gehl, 193 Ark. 1061, 104 S.W.2d 445, 447; also one enacted to cure past irregularities not jurisdictional. Dunkum v. Maceck *Bldg.* Corporation, 256 N.Y. 275, 176 N.E. 392, 396. Applied to evidence curative admissibility is the doctrine that an opponent may reply with similar evidence whenever it is needed for removing an unfair prejudice which might otherwise have ensued. Biener v. St. Louis Public Service Co., Mo.App., 160 S.W.2d 780, 786.

CURATOR. In the Civil Law. A person who is appointed to take care of anything for another. A guardian. One appointed to take care of the estate of a minor above a certain age, a lunatic, a spendthrift, or other person not regarded by the law as competent to administer it for himself. The title was also applied to a variety of public officers in Roman administrative law. Sproule v. Davies, 69 App.Div. 502, 75 N.Y.S. 229; Le Blanc v. Jackson, Tex.Civ.App., 161 S.W. 60, 66; Daniels v. Metropolitan Life Ins. Co., 135 Pa.Super. 450, 5 A.2d 608, 611.

In Scotch Law

The term means a guardian.

In Louisiana

A person appointed to take care of the estate of an absentee.

In Missouri

The term "curator" has been adopted from the civil law, and it is applied to the guardian of the estate of the ward as distinguished from the guardian of his person. Duncan v. Crook, 49 Mo. 117.

Curator ad hoc

In the civil law. A guardian for this purpose; a special guardian.

Curator ad litem

Guardian for the suit. In English law, the corresponding phrase is "guardian ad *litem."*

Curator bonis

In the civil law. A guardian or trustee appointed to take care of *property* in certain cases; as for the benefit of creditors. Dig. 42, 7. In Scotch law. The term is applied to guardians for minors, lunatics, etc.

Curatores viarum

Surveyors of the highways.

CURATORSHIP. The office of a curator. Curatorship differs from tutorship, *(q. v.)* in this; that the latter is instituted for the protection of property in the first place, and, secondly, of the person; while the former is intended to protect, first, the person, and secondly, the property. 1 Lec. El. Dr. Civ. Rom. 241.

CURATRIX. A woman who has been appointed to the office of curator; a female guardian. Cross' Curatrix v. Cross' Legatees, 4 Grat., Va., 257.

CURATUS NON HABET TITULUM. A curate has no title, [to tithes.1 3 Bulst. 310.

CURE. The act of healing; restoration to health from disease, or to soundness after injury. State

v. Gibson, 199' Iowa 177, 201 N.W. 590; State v. Stoddard, 215 Iowa, 534, 245 N.W. 273, 275, 86 A. L.R. 616. Under rule that a vessel and her owner must provide maintenance, and cure for seaman injured or falling ill while in service, "cure" is care, including nursing and medical attention during such period as the duty continues. Calmar S. S. Corporation v. Taylor, Pa., 303 U.S. 525, 58 S. Ct. 651, 653, 82 L.Ed. 993.

CURE BY VERDICT. The rectification or rendering nugatory of a defect in the pleadings by the rendition of a verdict; the court will presume, after a verdict, that the particular thing omitted or defectively stated in the pleadings was duly proved at the trial. State v. Keena, 63 Conn. 329, 28 A. 522; Treanor v. Houghton, 103 Cal. 53, 36 P. 1081.

CURE OF SOULS. In ecclesiastical law. The ecclesiastical or spiritual charge of a parish, including the usual and regular duties of a minister in charge. State v. Bray, 35 N.C. 290.

CURFEW. An institution supposed to have been introduced into England by order of William the Conqueror, which consisted in the ringing of a bell or bells at eight o'clock at night, at which signal the people were required to extinguish all lights in their dwellings, and to put out or rake up their fires, and retire to rest, and all companies to disperse. The word is probably derived from. the French *couvre feu,* to cover the fire. The curfew is spoken of in 1 Social England 373, as having been ordained by William I, in order to prevent nightly gatherings of the people of England. But the custom is evidently older than the Norman; for we find an order of King Alfred that the inhabitants of Oxford should at the ringing of that bell cover up their fires and go to bed. And there is evidence that the same practice prevailed at this period in France, Normandy, Spain, and probably in most of the other countries of Europe. Henry, Hist. of Britain, vol. 3, 567. It was doubtless intended as a precaution against fires, which were very frequent and destructive when most houses were built of wood. It appears to have met with so much opposition that in 1103 we find Henry I, repealing the enactment of his father on the subject; and Blackstone says that, though it is mentioned a century afterwards, it is rather spoken of as a time of night than as a still subsisting custom. Shakespeare frequently refers to it in the same sense.

CURIA. In old European law. A court. The palace, household, or retinue of a sovereign. A judicial tribunal or court held in the sovereign's palace. A court of justice. The civil power, as distinguished from the ecclesiastical. A manor; a nobleman's house; the hall of a manor. A piece of ground attached to a house; a yard or courtyard. Spelman. A lord's court held in his manor. The tenants who did suit and service at the lord's court. A manse. Cowell.

In Roman Law

A division of the Roman people, said to have been made by Romulus. They were divided into three tribes, and each tribe into ten curice, making thirty *curice* in all. Spelman. The place or building in which each *curia* assembled to offer sacred rites. The place of meeting of the Roman senate; the senate house. The senate house of a province; the place where the *decuriones* assembled. Cod. 10, 31, 2. See Decurio.

CURIA ADMIRALITATIS. The court of admiralty.

CURIA ADVISARI VULT. L. Lat. The court will advise; the court will consider. A phrase frequently found in the reports, signifying the resolution of the court to suspend judgment in a cause, after the argument, until they have deliberated upon the question, as where there is a new or difficult point involved. It is commonly abbreviated to *cur. adv. vult,* or *c.* a. v.

CURIA BARONIS, OR BARONUM. In old English law. A court-baron. Fleta, lib. 2, C. 53.

CURIA CANCELLABLE OFFICINA JUSTITLE. 2 Inst. 552. The court of chancery is the workshop of justice.

CURIA CHRISTIANITATIS. The ecclesiastical court.

CURIA CLAUDENDA. The name of a writ to compel another to make a fence or wall, which he was bound to make, between his land and the plaintiff's. Reg. Orig. 155. Now obsolete.

CURIA COMITATUS. The county court *(q.* v.)

CURIA CURSUS AQUIE. A court held by the lord of the manor of Gravesend for the better management of barges and boats plying on the river Thames between Gravesend and Windsor, and also at Gravesend bridge, etc. 2 Geo. II, c. 26.

CURIA DOMINI. In old English law. The lord's court, house, or hall, where all the tenants met at the time of keeping court. Cowell.

CURIA LEGITIME AFFIRMATA. A phrase used in old Scotch records to show that the court was opened in due and lawful manner.

CURIA MAGNA. In old English law. The great court; one of the ancient names of parliament.

CURIA MAJORIS. In old English law. The mayor's court. Calth. 144.

CURIA MILITUM. A court so called, anciently held at Carisbrook Castle, in the Isle of Wight. Cowell.

CURIA PALATII. The palace court. It was abolished by 12 & 13 Vict. c. 101.

CURIA PARLIAMENT' SUIS PROPRIIS LEGIBUS SUBSISTIT. 4 Inst. 50. The court of parliament is governed by its own laws.

CURIA PEDIS PULVERIZATI. In old English law. The court of *piedpoudre* or *piepouders.* 3 Bl. Comm. 32. See Court of Piepoudre.

CURIA PENTICIARUM. A court held by the sheriff of Chester, in a place there called the *"Pendice"* or *"Pentice;"* probably it was so called from being originally held under a pent-house, or open shed covered with boards. Blount.

CURIA PERSON/E. In old records. A parsonage-house, or manse. Cowell.

CURIA REGIS. The king's court. A term applied to the *aula regis,* the *bancus,* or *communis bancus,* and the *iter* or *eyre,* as being courts of the king, but especially to the *aula regis,* (which title see.)

CURIALITY. In Scotch law. Curtesy. Also the privileges, prerogatives, or, perhaps, retinue, of a court.

CURING TITLE. "Clearing", "curing", "straightening out", or "removing cloud from" title denotes acts or proceedings necessary to render title marketable. Johnston v. Cox, 114 Fla. 243, 154 So. 206.

CURIOSA ET CAPTIOSA INTERPRETATIO IN LEGE REPROBATUR. A curious [overnice or subtle] and captious interpretation is reprobated in law. 1 Balst. 6.

CURNOCK. In old English law. A measure containing four bushels or half a quarter of corn. Cowell; Blount.

CURRENCY. Coined money and such banknotes or other paper money as are authorized by law and do in fact circulate from hand to hand as the medium of exchange. Griswold v. Hepburn, 2 Duv., Ky., 33; Insurance Co. v. Kupfer, 28 Ill. 332, 81 Am.Dec.' 284. Certificates of deposit are "Currency." State ex rel. Cole v. Trimble, 307 Mo. 57, 269 S.W. 959, 961; Millikan v. Security Trust Co., 187 Ind. 307, 118 N.E. 568, 570. Gold certificate held "currency". Nortz v. U. S., Ct.C1., 294 U.S. 317, 55 S.Ct. 428, 79 L.Ed. 907, 907 A.L.R. 1346.

The term "money" is synonymous with "currency," and imports any currency, token, bank notes, or other circulating medium in general use as the representative of value. People v. Miller, 292 Ill. App. 643, 11 N.E.2d 827.

CURRENT. Running; now in transit; whatever is at present in course of passage; as "the current month." Wharton v. Morris, 1 Dail. 124, 1 L.Ed. 65; Miller v. White, Tex.Civ.App., 264 S.W. *176,* 178; Richardson v. Board of Education of City of Ashland, 208 Ky. 464, 271 S.W. 549, 550; American Fruit Growers v. United States, C.C.A. Cal., 105 F.2d 722, 726.

A continuous movement in the same direction, as a fluid or stream. Buckeye Incubator Co. v. Blum, D.C.Ohio, 17 F.2d 456, 458.

Passing in time or belonging to the time actually passing, now passing, present in its course, as the current month, and as applied to current obligations it denotes the obligations then passing or present in its progress, the service rendered and the compensation therefor measured by the time of the occurrence of the event. Pecos Mercantile Co. v. Texlite, Inc., Tex.Civ.App., 65 S.W.2d 811, 812.

The word "current," when used as an adjective, has many meanings, and definition depends largely on word which it modifies, or subject-matter with which it is associated. Commissioner of Internal Revenue v. Keller, C.C.A., 59 F.2d 499, 501.

CURRENT ACCOUNT. An open, running, or unsettled account between two parties. Tucker v. Quimby, 37 Iowa 19; Franklin v. Camp, 1 N.J.Law, 196; Wilson v. Calvert, 18 Ala. 274; Leland v. Johnson, 227 Iowa 520, 288 N.W. 595, 597; Miller v. Boyce, 219 Iowa 534, 258 N.W. 764.

CURRENT CATALOGUES. Under contract to sell automobiles as shown in current catalogues, "current catalogues" means such catalogues as should from time to time be issued, and not merely the catalogues in existence on execution of the contract. Imperial Motorcar Co. v. Skinner, 16 Ala. App. 443, 78 So. 641, 642.

CURRENT DEBT FUND RULE. The "current debt fund rule" is that creditors who have supplied labor, materials, or equipment essential to operation of railroad before adjudication of insolvency will be entitled to lien on properties prior to lien of pre-existing mortgages, if current operating revenues have been diverted to payment of principal or interest on mortgages, or to enhancement of mortgage security before current operating expenses have been met. Village of Stillwater v. Hudson Valley Ry. Co., 255 N.Y. 144, 309, 174 N.E. 306.

CURRENT EXPENSES. Ordinary, regular, and continuing expenditures for the maintenance of property, the carrying on of an office, municipal government, etc. State v. Board of Education, 68 N.J.Law, 496, 53 A. 236; Babcock v. Goodrich, 47 Cal. 510; St. Louis-San Francisco Ry. Co. v. Forbess, 111 Oki. 48, 237 P. 596, 597.

In connection with municipal finances, the usual, ordinary, running, and incidental expenses of a municipality. Atchison, T. & S. F. Ry. Co. v. City of Topeka, 95 Kan. 747, 149 P. 697. The term is equivalent to "running expenses," meaning any continuing regular expenditures in connection with the business. Meridian Line Drainage Dist. v. Wiss, 258 Ill. 600, 101 N.E. 941, 942.

CURRENT FUNDS. This phrase means gold or silver, or something equivalent thereto, and convertible at pleasure into coined money. Bull v. Bank, 123 U.S. 105, 8 S.Ct. 62, 31 L.Ed. 97; Henderson v. Farmers' Sa$^{y}$. Bank of Harper, 199 Iowa 496, 202 N.W. 259, 261.

CURRENT LIABILITIES. The phrase "current liability" carries with it the idea of a liability that is presently enforceable. Warren Co. v. Commissioner of Internal Revenue, C.C.A.Ga., 135 F.2d 679, 684, 685.

CURRENT MAINTENANCE. "Current maintenance" is defined as the expense occasioned in keeping the physical property in the condition required for continued use during its service life. Lindheimer v. Illinois Bell Telephone Co., Ill., 292 U.S. 151, 54 S.Ct. 658, 78 L.Ed. 1182.

CURRENT MONEY. The currency of the country; whatever is intended to and does actually circulate as currency; every species of coin or currency. Miller v. McKinney, 5 Lea, Tenn., 96. In this phrase the adjective "current" is not synonymous with "convertible." It is employed to describe money which passes from hand to hand, from person to person, and circulates through the community, and is generally received. Money is current which is received as money in the common business transactions, and is the common medium in barter and trade. Ferrell v. State, 68 Tex.Cr.R. 487, 152 S.W. 901, 905; Kupfer v. Marc, 28 Ill. 388; Conwell Pumphrey, 9 Ind. 135, 68 Am.Dec. 611.

CURRENT OBLIGATIONS. The word "current" means passing in time or belonging to the time actually passing, now passing, present in its course, as the current month, and as applied to current obligations it denotes the obligations then passing or present in its progress, the service rendered and the compensation therefor measured by the time of the occurrence of the event. Pecos Mercantile Co. v. Texlite, Inc., Tex.Civ.App., 65 S.W.2d 811, 812.

CURRENT PRICE. This term means the same as "market value," "market price," "going price," the price that runs or flows with the market. Hoff v. Lodi Canning Co., 51 Cal.App. 299, 196 P. 779, 780; Ford v. Norton, 32 N.M. 518, 260 P. 411, 414, 55 A.L.R. 261; Cases of Champagne, 23 Fed. Cas. 1168.

CURRENT RATE OF WAGES. Minimum, maximum, and intermediate amounts, indeterminately varying from time to time and dependent on the class and kind of work done, the efficiency of the workman, etc. Connally v. General Const. Co., 269 U.S. 385, 46 S.Ct. 126, 128, 70 L.Ed. 322.

"CURRENT REVENUES". Defined as including taxes for ensuing year and all liquid assets, such as delinquent taxes, licenses, fines, and other revenues which, in judgment of authorities, are collectible. Athens Nat. Bank v. Ridgebury Tp., 303 Pa. 479, 154 A. 791, 792.

CURRENT VALUE. The current value of imported commodities is their common market price at the place of exportation, without reference to the price actually paid by the importer. Tappan v. U. S., 23 Fed.Cas. 690.

CURRENT WAGES. Such as are paid periodically, or from time to time as the services are rendered or the work is performed; more particularly, wages for the current period, hence not including such as are past-due. Sydnor v. Galveston, Tex.App., 15 S.W. 202; Bell v. Indian Live Stock Co., Tex., 11 S.W. 346, 3 L.R.A. 642; Bruton v. Tearle, 7 Cal.2d 48, 59 P.2d 953, 957, 106 A.L.R. 580.

CURRENT YEAR. The year now running. Doe v. Dobell, 1 Adol. & El. 806; Clark v. Lancaster County, 69 Neb. 717, 96 N.W. 593. Ordinarily, a calendar year in which the event under discussion took place; Buffalo County v. Bowker, 197 N.W. 620, 622, 111 Neb. 762; Clark v. Tennessee Chemical Company, 167 Ga. 248, 145 S.E. 73, 75; Empire Petroleum Co. v. Southern Pipe Line Co., 174 Ark. 33, 294 S.W. 5, 6; unless the context shows a different intention; Miller v. White, Tex.Civ.App., 264 S.W. 176, 178; People v. Central Illinois Public Service Co., 324 Ill. 85, 154 N.E. 438, 439.

CURRICULUM. The year; of the course of a year; the set of studies for a particular period, appointed by a university.

CURRIT QUATUOR PEDIBUS. L. Lat. It runs upon four feet; or, as sometimes expressed, it runs upon all fours. A phrase used in arguments to signify the entire and exact application of a case quoted. "It does not follow that they run *quatuor pedibus.*" 1 W.Bl. 145.

CURRIT TEMPUS CONTRA DESIDES ET SUI JURIS CONTEMPTORES. Time runs against the slothful and those who neglect their rights. Bract. fols. 100b, 101.

CURSING. Malediction; imprecation; execration; profane words intended to convey hate and to invoke harm; swearing. Johnson v. State, 15 Ala.App. 194, 72 So. 766.

CURSITOR BARON. An officer of the court of exchequer, who is appointed by patent under the great seal to be one of the barons of the exchequer. The office was abolished by St. 19 & 20 Vict. c. 86.

CURSITORS. Clerks in the chancery office, whose duties consisted in drawing up those writs which were of course, *de cursu,* whence their name. They were abolished by St. 5 & 6 Wm. IV, c. 82. Spence, Eq.Jur. 238; 4 Inst. 82.

CURSO. In old records. A ridge. *Cursones terrce,* ridges of land. Cowell.

CURSOR. An inferior officer of the papal court.

CURSORY EXAMINATION. An inspection for defects visible or ascertainable by ordinary examination. Coll v. Lehigh Valley R. Co., 3 N.J.Misc. 869, 130 A. 225, 226.

CURSUS CURIAE EST LEX CURVE. 3 Bulst. 53. The practice of the court is the law of the court.

CURTAIL. "Curtail" means to cut off the end or any part of; hence to shorten, abridge; diminish*, lessen, reduce; and has no such meaning as abolish. State v. Edwards, 207 La. 506, 21 So.2d 624, 625.

CURTESY. The estate to which by common law a man is entitled, on the death of his wife, in the lands or tenements of which she was seised in possession in fee-simple or in tail during her coverture, provided they have had lawful issue born alive which might have been capable of inheriting the estate. It is a freehold estate for the term of his natural life. 1 Washb.Real Prop. 127; 2 BL Comm. 126; Co.Litt. 30a; Dozier v. Toalson, 180 Mo. 546, 79 S.W. 420, 103 Am.St.Rep. 586;

Templeton v. Twitty, 88 Tenn. 595, 14 S.W. 435; Decker v. Decker, 205 Ky. 69, 265 S.W. 483, 485.

Initiate and consummate

Curtesy initiate is the interest which a husband has in his wife's estate after the birth of issue capable of inheriting, and before the death of the wife; after her death, it becomes an estate "by the curtesy consummate." Wait v. Wait, 4 Barb., N.Y. 205; Churchill v. Hudson, C.C.Mo., 34 F. 14; Pattison v. Baker, 148 Tenn. 399, 255 S.W. 710, 29 A.L.R. 1334; Bucci v. Popovich, 93 N.J. Eq. 121, 115 A. 95, 96; Hopper v. Gurtman, 126 *N.J.* 263, 18 A.2d 245, 246, 250, 133 A.L.R. 621.

CURTEYN. The name of King Edward the Confessor's sword. It is said that the point of it was broken, as an emblem of mercy. (Mat. Par. in Hen. III.) Wharton.

CURTILAGE. The inclosed space of ground and buildings immediately surrounding a dwelling-house. 1 Chit.Gen.Pr. 175; United States v. Vlahos, D.C.Or., 19 F.Supp. 166, 169.

In its most comprehensive and proper legal signification, it includes all that space of ground and buildings thereon which is usually inclosed within the *general fence* immediately surrounding a principal messuage and outbuildings, and yard closely adjoining to a dwelling-house, but it may be large enough for cattle to be levant and couchant therein. 1 Chit.Gen.Pr. 175.

The curtilage of a dwelling-house is a space, necessary and convenient and habitually used for the family purposes, and the carrying on of domestic employments. It includes the garden, if there be one, and it need not be separated from other lands by fence. State v. Shaw, 31 Me. 523; Derrickson v. Edwards, 29 N.J.Law, 474, 80 Am. Dec. 220; Bare v. Commonwealth, 122 Va. 783, 94 S.E. 168, 172; State v. Lee, 120 Or, 643, 253 P. 533, 534.

A piece of ground commonly used with the dwelling house. Fugate v. Commonwealth, 294 Ky. 410, 171 S.W.2d 1020, 1021. A small piece of land, not necessarily inclosed, around the dwelling house, and generally includes the buildings used for domestic purposes in the conduct of family affairs. Bruner v. State, 47 Okl.Cr. 241, 288 P. 369, 370; a courtyard or the space of ground adjoining the dwelling house necessary and convenient and habitually used for family purposes and the carrying on of domestic employments. Jones v. Commonwealth, 239 Ky. 110, 38 S.W.2d 971, 973. A piece of ground within the common inclosure belonging to a dwelling house, and enjoyed with it, for its more convenient occupation. Italian-American Building & Loan Ass'n of Passaic County v. Russo, 132 N.J.Eq. 319, 28 A.2d 196, 198; People v. Gedney, 10 Hun., N.Y., 154. In Michigan it has been extended to include more than an inclosure near the house. People v. Taylor, 2 Mich. 250.

CURTILES TERRIE. In old English law. Court lands. Cowell. See Court Lands.

CURTILLIUM. A curtilage; the area or space within the inclosure of a dwellinghouse. Spelman.

CURTIS. A garden; a space about a house; a house, or manor; a court, or palace; a court of justice; a nobleman's residence. Spelman.

CUSSEDNESS. "Wantonness" is a synonym for what is popularly known as "cussedness," and "cussedness" is a disposition to perversity. Universal Concrete Pipe Co. v. Bassett, 130 Ohio St. 567, 200 N.E. 843, 845.

CUSSORE. A term used in Hindostan for the discount or allowance made in the exchange of rupees, in contradistinction to *batta,* which is the sum deducted. Enc.Lond.

CUSTA, CUSTAGIUM, CUSTANTIA. Costs.

CUSTODE ADMITTENDO, CUSTODE AMOVENDO. Writs for the admitting and removing of guardians.

CUSTODES.

In Roman Law

Guardians; observers; inspectors. Persons who acted as inspectors of elections, and who counted the votes given. Tayl.Civil Law, 193.

In Old English Law

Keepers; guardians; conservators.

CUSTODES LIBERTATIS ANGLLE AUCTORITATE PARLIAMENTI. The style in which writs and all judicial processes were made out during the great revolution, from the execution of King Charles I. till Oliver Cromwell was declared protector.

CUSTODES PACIS. Guardians of the peace. 1 Bl.Comm. 349.

CUSTODIA LEGIS. In the custody of the law. Stockwell v. Robinson, 9 Houst., Del., 313, 32 A. 528; Troll v. City of St. Louis, 257 Mo. 626, 168 S.W. 167, 178; Hopping v. Hopping, 233 Iowa 993, 10 N.W.2d 87, 152 A.L.R. 436.

CUSTODIAM LEASE. In English law. A grant from the crown under the exchequer seal, by which the custody of lands, etc., seised in the king's hands, is demised or committed to some person as custodee or lessee thereof. Wharton.

CUSTODY. The care and keeping of anything; as when an article is said to be "in the custody of the court." People V. Burr, 41 How.Prac., N.Y., 296; Emmerson v. State, 33 Tex.Cr.R. 89, 25 S.W. 290; Roe v. Irwin, 32 Ga. 39. Also the detainer of a man's person by virtue of lawful process or authority; actual imprisonment. In a sentence that the defendant "be in custody until," etc., this term imports actual imprisonment. Smith v. Com., 59 Pa. 320; Turner v. Wilson, 49 Ind. 581; Ex parte Powers, D.C.Ky., 129 F. 985. Detention; charge; control; possession. The term is very elastic and may mean actual imprisonment or physical detention or mere power, legal or physical, of imprisoning or of taking manual possession. Jones v. State, 26 Ga.App. 635, 107 S.E. 166; J. O. Nessen Lumber Co. v. Ray H. Bennett Lumber Co., 223 Mich. 349, 193 N.W. 789, 790; State ex rel. Bricker v. Griffith, Ohio App., 36 N.E.2d 489, 491; Willoughby v. State, 87 Tex.Cr.R. 40, 219 S.W. 468, 470; Carpenter v. Lord, 88 Or. 128,

171 P. 577, 579, L.R.A.1918D, 674; Little v. State, 100 Tex.Cr.R. 167, 272 S.W. 456, 457; Randazzo v. *U.* S., C.C.A.Mo., 300 F. 794, 797.

The word is defined as the care and possession of a thing, and means the keeping, guarding, care, watch, inspection, preservation or security of a thing, and carries with it the idea of the thing being within the immediate personal care and control of the person to whose custody it is subjected; charge ; immediate charge and control, and not the final, absolute control of ownership, implying responsibility for the protection and preservation of the thing in custody. Southern Carbon Co. v. State, 171 Misc. 566, 13 N.Y.S.2d 7, 9.

"Custody" of property means such a relation towards it as would constitute possession if the person having custody had it on his own account. State v. Columbus State Bank, 124 Neb. 231, 246 N.W. 235, 238. "Custody" means a keeping, guardianship, the state of being held in keeping or under guard, restraint of liberty, imprisonment, and "fetter" is a synonym. Browder v. Cook, D.C.Idaho, 59 F.Supp. 225, 231.

CUSTODY OF THE LAW. Property is in the custody of the law when it has been lawfully taken by authority of legal process, and remains in the possession of a public officer (as, a sheriff) or an officer of a court (as, a receiver) empowered by law to hold it. Gilman v. Williams, 7 Wis. 334, 76 Am.Dec. 219; McFarland Carriage Co. v. Solanes, C.C.La., 108 V. 532; Allan v. Hargadine-McKittrick Dry Goods Co., 325 Mo. 400, 28 S.W.2d 670, 673.

CUSTOM. A usage or practice of the people, which, by common adoption and acquiescence, and by long and unvarying habit, has become compulsory, and has acquired the force of a law with respect to the place or subject-matter to which it relates. Adams v. Insurance Co., 95 Pa. 355, 40 Am.Rep. 662; King v. Shelton, Tex.Civ. App., 252 S.W. 194, 195; Conahan v. Fisher, 233 Mass. 234, 124 N.E. 13, 15; Lawrence v. Portland Ry., Light & Power Co., 91 Or. 559, 179 P. 485, 486; U. S. Shipping Board Emergency Fleet Corporation v. Levensaler, 53 App.D.C. 322, 290 F. 297, 300.

A "custom" is a practice or course of acting. Goslin v. Kurn, 351 Mo. 395, 173 S.W.2d 79, 86.

Ordinary or usual way of doing a thing, habit ; practice. Adelman v. Altman, 209 Mo.App. 583, 240 S.W. 272, 276; Kent v. Town of Patterson, 141 N.Y.S. 932, 933, 80 Misc. Rep. 560 ; Maeder Steel Products Co. v. Zanello, 109 Or. 562, 220 P. 155, 161; Carter v. Sioux City Service Co., 160 Iowa 78, 141 N.W. 26, 29.

It results from a long series of actions, constantly repeated, which have, by such repetition and by uninterrupted acquiescence, acquired the force of a tacit and common consent. Louisville & N. R. Co. v. Reverman, 243 Ky. 702, 49 S.W.2d 558, 560.

A law not written, established by long usage, and the consent of our ancestors. Termes de la Ley; Cowell; Bract.fol. 2. Portuguese Beneficial Ass'n v. Xavier, 59 R.I. 265, 195 A. 231, 233. If it be universal, it is common law; if particular to this or that place, it is then properly custom. 3 Salk. 112.

Customs result from a long series of actions constantly repeated, which have, by such repetition, and by uninterrupted acquiescence, acquired the force of a tacit and common consent. Civil Code La..art. 3.

It differs from prescription, which is personal and is annexed to the person of the owner of a particular estate; while the other is local, and relates to a particular district. An instance of the latter occurs where the question is upon the manner of conducting a particular branch of trade at a certain place; of the former, where a certain person and his ancestors, or those whose estates he has, have been entitled to a certain advantage or privilege, as to have common of pasture in a certain close, or the like. The distinction has been thus expressed : "While prescription is the making of a right, custom is the making of a law." Lawson, Usages & Cust. 15, note 2.

### Classification

Customs are general, local or particular. *General* customs are such as prevail throughout a country and become the law of that country, and their existence is to be determined by the court. Bodfish v. Fox, 23 Me. 95,. 39 Am.Dec. 611. Or as applied to usages of trade and business, a general custom is one that is followed in all cases by all persons in the same business in the same territory, and which has been so long established that persons sought to be charged thereby, and all others living in the vicinity, may be presumed to have known of it and to have acted upon it as they had occasion. Sturges v. Buckley, 32 Conn. 267; Railroad Co. v. Harrington, 192 Ill. 9, 61 N.E. 622. Local customs are such as prevail only in some particular district or locality, or in some city, county, or town. Clough v. Wing, 2 Ariz. 371, 17 P. 457. *Particular* customs are nearly the same, being such as affect only the inhabitants of some particular district. 1 Bl.Comm. 74.

### Custom of Merchants

A system of customs or rules relative to bills of exchange, partnership, and other mercantile matters, and which, under the name of the *"lex mercatoria,"* or "law merchant," has been ingrafted into and made a part of, the common law. 1 BL Comm. 75; 1 Steph.Comm. 54; 2 Burrows, 1226, 1228.

### Custom of York

A custom of intestacy in the province of York similar to that of London. Abolished by 19 & 20 Vict. c. 94.

### Customs and Services

Annexed to the tenure of lands are those which the tenants thereof owe unto their lords, and which, if withheld, the lord might anciently have resorted to "a writ of customs and services" to compel them. Cowell. But at the present day he would merely proceed to eject the tenant as upon a forfeiture, or claim damages for the subtraction. Brown.

### Customs of London

Certain particular customs, peculiar to that city, with regard to trade, apprentices, 'Widows, orphans and a variety of other matters; contrary to the general law of the land, but confirmed by act of parliament. 1 Bl.Comm. 75,

### Special Custom

A particular or local custom; one which, in respect to the sphere of its observance, does not extend throughout the entire state or country, but is confined to some particular district or locality. 1 Bl.Comm. 67; Bodfish v. Fox, 23 Me. 95, 39 Am. Dec. 611,

CUSTOM. DUTIES. Taxes on the importation and exportation of commodities; the tariff or tax assessed upon merchandise, imported from, or exported to a foreign country. United States v. Sischo, D.C.Wash., 262 F. 1001, 1005.

CUSTOM-HOUSE. In administrative law. The house or office where commodities are entered for importation or exportation; where the duties, bounties, or drawbacks payable or receivable upon such importation or exportation are paid or received; and where ships are cleared out, etc.

CUSTOM-HOUSE BROKER. One whose occupation it is, as an agent, to arrange entries and other custom-house papers, or transact business, at any port of entry, relating to the importation or exportation of goods, wares, or merchandise. 14 St. at Large, 117. A person authorized by the commissioners of customs to act for parties, at their option, in the entry or clearance of ships and the transaction of general business. Wharton; State v. William J. Oberle, Inc., La.App., 140 So. 239, 240.

CUSTOMARILY. Means usually, habitually, according to the customs, general practice or usual order of things, regularly. Fuller Brush Co. v. Industrial Commission of Utah, 99 Utah 97, 104 P.2d 201, 203, 129 A.L.R. 511.

CUSTOMARY. According to custom or usage; founded on, or growing out of, or dependent on, a custom *(q. v.);* ordinary; usual; common. Kent v. Town of Patterson, 80 Misc.Rep. 560, 141 N.Y.S. 932, 933; Montgomery v. O'Donnell, 178 Iowa 588, 159 N.W. 1025, 1026; Woods v. Postal Telegraph-Cable Co., 205 Ala. 236, 87 So. 681, 686, 27 A.L.R. 834.

CUSTOMARY COURT-BARON. See Court-Baron.

CUSTOMARY DISPATCH. In charter party. Due diligence according to lawful, reasonable and well-known custom of port or ports involved. Context and conditions existing or contemplated will, of course, affect the meaning of the phrase. Wasson v. Stetson, Cutler & Co., D.C.Mass., 214 F. 329, 333; Taisho Kaiun Kabushiki Kaisha v. Gano Moore Co., D.C.Del., 14 F.2d 985, 986.

CUSTOMARY ESTATES. Estates which owe their origin and existence to the custom of the manor in which they are held. 2 Bl.Comm. 149.

CUSTOMARY FREEHOLD. In English law. A variety of copyhold estate, the evidences of the title to which are to be found upon the court rolls; the entries declaring the holding to be according to the custom of the manor, but it is not said to be at the will of the lord. The incidents are similar to those of common or pure copyhold. 1 Steph. Comm. 212, 213, and note.

CUSTOMARY INTERPRETATION. See Interpretation.

CUSTOMARY SERVICES. Such as are due by ancient custom or prescription only.

CUSTOMARY TENANTS. Tenants holding by custom of the manor.

CUSTOME SERRA PRISE STRICTE. Custom shall be taken [is to be construed] strictly. Jenk. Cent. 83.

CUSTOMER. One who regularly or repeatedly makes purchases of, or has business dealings with, a tradesman or business house. Aiken Mills v. United States, D.C.S.C., 53 F.Supp. 524, 526; Arkwright Corporation v. United States, D.C.Mass., 53 F.Supp. 359, 361. Ordinarily, one who has had repeated business dealings with another. Lyons v. Otter Tail Power Co., 70 N.D. 681, 297 N.W. 691, 693; Gallopin v. Continental Casualty Co., 290 Ill. App. 8, 7 N.E.2d 771, 774. A buyer, purchaser, or patron. Nichols v. Ocean Accident & Guarantee Corporation, 70 Ga.App. 169, 27 S.E.2d 764, 766.

CUSTOMERS GOODS. The words "customers' goods," as used in statement of claim on fire policy referring to merchandise destroyed as "customers' goods," in their ordinary sense, mean goods belonging to insured's customers in his custody as a bailee for the purpose of his trade. Sagransky v. Tokio Marine & Fire Ins. Co., 92 Pa.Super. 500, 502.

CUSTOMER'S MAN. One who has duty to greet customers of broker, when they appear in office on business, to assist them in placing their orders, and generally to see that their wants are taken care of. Fenner & Beane v. Lincoln, Tex.Civ.App., 101 S.W.2d 305, 308; an employee of a brokerage house who solicits from the investing public orders for the purchase and sale of commodities and securities to be executed upon various commodities and securities exchanges in the United States. Gould v. Witter, 10 Wash.2d 553, 117 P. 2d 210, 211. The term includes all employees who are regularly engaged in the solicitation of marginal business or the handling of customers' accounts, or who advise with customers about the purchase and sale of securities. Clothier v. Beane, 187 Okl. 693, 105 P.2d 752, 756.

CUSTOMS. This term is usually applied to those taxes which are payable upon goods and merchandise imported or exported. Story, Const. § 949; Pollock v. Trust Co., 158 U.S. 601, 15 S.Ct. 912, 39 L.Ed. 1108; Marriott v. Brune, 9 How. 632, 13 L. Ed. 282.

The duties, toll, tribute, or tariff payable upon merchandise exported or imported. These are called "customs" from having been paid from time immemorial. Expressed in law Latin by *custuma,* as distinguished from *consuetudines,* which are usages merely. 1 Bl. Comm. 314.

CUSTOMS CONSOLIDATION ACT. The statute 16 & 17 Viet. c. 107, which has been frequently amended. See 2 Steph. Comm. 563.

CUSTOMS COURT. By virtue of Act May 28, 1926, c. 411, § 1, 44 Stat. 669, 19 U.S.C.A. § 405a, the "United States Customs Court" became the title of what had theretofore been known as the "Board of General Appraisers." Ex parte Bake-

lite Corporation, 279 U.S. 438, 49 S.Ct. 411, 73 L. Ed. 789. Its decisions are appealable to the "Court of Customs and Patent Appeals" (q. v.) in all cases as to the construction of the law and facts respecting the classification of merchandise and the rate of duty imposed thereon, and the fees and charges connected therewith, and all appealable questions as to the court's jurisdiction, and as to the laws and regulations governing the collection of the customs revenues.

CUSTOS. Lat. A custodian, guard, keeper, or warden; a magistrate.

CUSTOS BREVIUM. The keeper of the writs. A principal clerk belonging to the courts of queen's bench and common pleas, whose office it was to keep the writs returnable into those courts. The office was abolished by 1 Wm. IV, c. 5.

CUSTOS FERARUM. A gamekeeper. Townsh. Pl. 265.

CUSTOS HORREI REGII. Protector of the royal granary. 2 Bl. Comm. 394.

CUSTOS MARIS. In old English law. Warden of the sea. The title of a high naval officer among the Saxons and after the Conquest, corresponding with admiral.

CUSTOS MORUM. The guardian of morals. The court of queen's bench has been so styled. 4 Steph. Comm. 377.

CUSTOS PLACITORUM CORONAE. In old English law. Keeper of the pleas of the crown. Bract. fol. 14b. Cowell supposes this office to have been the same with the *custos rotulorum.* But it seems rather to have been another name for "coroner." Crabb, Eng. Law, 150; Bract. fol. 136b.

CUSTOS ROTULORUM. Keeper of the rolls. An officer in England who has the custody of the rolls or records of the sessions of the peace, and also of the commission of the peace itself. He is always a ' justice of the quorum in the county where appointed and is the principal civil officer in the county. 1 Bl. Comm. 349; 4 Bl. Comm. 272.

CUSTOS SPIRITUALIUM. In English ecclesiastical law. Keeper of the spiritualities. He who exercises the spiritual jurisdiction of a diocese during the vacancy of the see. Cowell.

CUSTOS STATUM HIEREDIS IN CUSTODIA EXISTENTIS MELIOREM, NON DETERIOREM, FACERE POTEST. 7 Coke, 7. A guardian can make the estate of an existing heir under his guardianship better, not worse.

CUSTOS TEMPORALIUM. In English ecclesiastical law. The person to whom a vacant see or abbey was given by the king, as supreme lord. His office was, as steward of the goods and profits, to give an account to the escheator, who did the like to the exchequer.

CUSTOS TERRIE. In old English law. Guardian, warden, or keeper of the land.

CUSTUMA ANTIQUA SIVE MAGNA. (Lat. Ancient or great duties.) The duties on wool, sheepskin, or wool-pelts and leather exported were so called, and were payable by every merchant, stranger as well as native, with the exception that merchant strangers paid one-half as much again as natives. 1 Bl. Comm. 314.

CUSTUMA PARVA ET NOVA. (Small and new customs.) Imposts of 3d. in the pound, due formerly in England from merchant strangers only, for all commodities, as well imported as exported. This was usually called the "aliens duty," and was first granted in 31 Edw. I. 1 Bl. Comm. 314; 4 Inst. 29.

CUT. A wound made with a sharp instrument. State v. Patza, 3 La.Ann. 512; State v. Cody, 18 Or. 506, 23 Pac. 891; State v. Mairs, 1 N.J.Law, 453; the term is not limited to severance by use of a sharp instrument, but also Means to fell, and in industry, to reduce by or as by removing a part. Waselinko v. Volpe Coal Co., 152 Pa.Super. 156, 31 A.2d 444, 445.

In Mining

A surface opening in the ground intersecting a vein. McLaughlin v. Bardsen, 50 Mont. 177, 145 P. 954, 955.

CUT-OVER LAND. Land which has been logged; from which desired timber has been removed. Carlisle-Pennell Lumber Co. v. Joe Creek Shingle Co., 131 Wash. 501, 230 P. 425; Tennessee Mining & Mfg. Co. v. New River Lumber Co., C.C.A.Tenn., 5 F.2d 559, 560.

CUT SHELL. One in which the part containing the shot is nearly severed from the part containing powder, so as to be projected in a unit, and inflict a more dangerous wound than if the shot were scattered. White v. State, 195 Ala. 681, 71 So. 452, 454.

CUTCHERRY. In Hindu law. Corrupted from *Kachari.* A court; a hall; an office; the place where any public business is transacted.

CUTH, COUTH. Sax. Known, knowing. *Uncuth,* unknown. See Couthutlaugh; Uncuth.

CUTHRED. A knowing or skillful counsellor.

CUTLER. Either a man who makes edged tools or one who grinds them. American Stainless Steel Co. v. Ludlum Steel Co., C.C.A.N.Y., 290 F. 103, 106.

CUTPURSE. One who steals by the method of cutting purses; a common practice when men wore their purses at their girdles, as was once the custom. Wharton.

CUTTER OF THE TALLIES. In old English law. An officer in the exchequer, to whom it belonged to provide wood for the tallies, and to cut the sum paid upon them, etc.

CUTWAL, KATWAL. The chief officer of police or superintendent of markets in a large town or city in India.

CWT. A hundred-weight; one hundred and twelve pounds. Helm v. Bryant, 11 B. Mon. (Ky.) 64.

CY. In law French. Here. *(Cy-apres,* hereafter; *cy-devant,* heretofore.) Also as, so.

CYCLE. A measure of time; a space in which the same revolutions begin again; a periodical space of time. Enc. Lond. In electrical nomenclature is two successive reversals of directions of electromotive force or current or full period of alternative current. Chicago Pneumatic Tool Co. v. Black & Decker Mfg. Co., Cust. & Pat.App., 39 F. 2d 684, 685.

CYCLONE. "A violent storm, often of vast extent, characterized by high winds rotating about a calm center of low atmospheric pressure. Popularly, any violent and destructive windstorm." Tupper v. Massachusetts Bonding & Insurance Co., 156 Minn. 65, 194 N.W. 99, 100; Cedergren v. Massachusetts Bonding & Insurance Co., C.C.A. Minn., 292 F. 5, 6; the term includes the hurricane, typhoon, bagino, and other tropical storms. Federal Life Ins. Co. v. Hall, 90 Colo. 581, 11 P. 2d 215, 216.

CYNE-BOT, or CYNE-GILD. The portion belonging to the nation of the mulct for slaying the king, the other portion or *were* being due to his family. Blount.

CYNEBOTE. A mulct anciently paid by one who killed another, to the kindred of the deceased. Spelman.

CYPHONISM. That kind of punishment used by the ancients, and still used by the Chinese, called by Staunton the "wooden collar," by which the neck of the malefactor is bent or weighed down. Enc. Lond.

CY-PRES. As near as [possible]. The rule of *cy-pres* is a rule for the construction of instruments in equity, by which the intention of the party is carried out *as near as* may *be,* when it would be impossible or illegal to give it literal effect. Thus, where a testator attempts to create a perpetuity, the court will endeavor, instead of making the devise entirely void, to explain the will in such a way as to carry out the testator's general intention as far as the rule against perpetuities will allow. So in the case of bequests to charitable uses; and particularly where the language used is so vague or uncertain that the testator's design must be sought by construction. Beekman v. Bonsor, 23 N.Y. 308, 80 Am.Dec. 269; Doyle v. Whalen, 87 Me. 414, 32 A. 1022, 31 L. R.A. 118; Philadelphia v. Girard, 45 Pa. 28, 84 Am. Dec. 470; People v. Braucher, 258 Ill. 604, 101 N. E. 944, 946, 47 L.R.A., N.S., 1015; Tincher v. Arnold, C.C.A.Ill., 147 F. 665; Crane v. Morristown School Foundations, 120 N.J.Eq. 583, 187 A. 632, 635,

CYRCE. In Saxon law. A church.

CYRICBRYCE. A breaking into a church. Blount.

CYRICSCEAT. (From *cyric,* church, and *sceat,* a tribute). In Saxon law. A tribute or payment due to the church. Cowell.

CYROGRAPHARIUS. In old English law. A cyrographer; an officer of the *bancus,* or court of common bench. Fleta, lib. 2, c. 36.

CYROGRAPHUM. A chirograph, (which see.)

CZAR. (Also written *zar, tsar, tzar,* etc.) The title of the former emperors of Russia, derived from the old Slavonic *cesar,* king or emperor, which, although long held to be derived from the Roman title *Caesar,* is almost certainly of Tartar origin. 8 Encyc. Americana, 378. The Slavonic word ultimately represents the Latin *Caesar,* but came, according to Miklosich, through the medium of a Germanic language in which the word had the general sense "emperor." 2 New English Dict. (Oxford, 1893), page 1308.

In the beginning of the 10th century the Bulgarian prince Symeon assumed this title, which remained attached to the Bulgarian crown. In 1346 it was adopted by Stephen Duschan, king of Serbia. Among the Russians the Byzantine emperors were so called, as were also the khans of the Mongols that ruled in Russia. Ivan III, grand prince of Moscow, held the title, and Ivan IV, the Terrible, in 1547, caused himself to be crowned as czar. In 1721 the Senate and clergy conferred on Peter I, in the name of the nation, the title Emperor of Russia, for which in Russia the Latin word *imperator* Is used. 8 Encyc.Americana, 378. Peter the Great introduced the title *imperator, "emperor,"* and the official style then became "Emperor of all the Russias, Tsar of Poland, and Grand Duke of Finland" ; but the Russian popular appellation continued to be *tsar* (the preferable modern spelling). 2 New English Diet. 1308. The last tsar was Nicholas II, who abdicated on March 15, 1917, and was later executed.

CZAREVITCH. (Also spelled *czarewich, tsarevitch,* and, after the Polish, *czarowitz, czarowitch,* etc. 2 New English Dict. 1308.) A son of the Russian czar and czarina. Originally a title. Webster, Dict. The word was used as a title during the time of Peter I and his son, Alexis, after whose death imperial princes were called grand dukes. 6 New Internatl. Encyc. 420.

CZAREVNA, TS AREVNA. A daughter of the Russian czar. Originally a title. Webster, Dict. As a title, however, the word has been superseded, since the time of Paul I (1754-1801), by that of grand duchess. New Internatl. Encyc. 420; 2 New English Diet. 1308. See Czarevitch; Cesarevna.

CZARINA. The title of former empresses of Russia.

CZARITZA, TSARITSA. The Russian title for which *czarina* is in ordinary English use. 2 New English Dist. 1308.

# D

The fourth letter of the English alphabet. It is used as an abbreviation for a number of words, the more important and usual of which are as follows:

*1. Digestum,* or *Digesta,* that is, the Digest or Pandects in the Justinian collections of the civil law. Citations to this work are sometimes indicated by this abbreviation, but more commonly by "Dig."

*2. Dictum.* A remark or observation, as in the phrase *"obiter dictum," (q. v.).*

*3. Demissione.* "On the demise." An action of ejectment *is* entitled "Doe *d.* Stiles v. Roe;" that is, "Doe, on the demise of Stiles, against Roe."

*4. "Doctor."* . As in the abbreviated forms of certain academical degrees. "M. D.," "doctor of medicine;" "LL.D.," "doctor of laws;" "D. C. L.," "doctor of civil law."

*5. "District."* Thus, "U. S. Cir. Ct. W. *D.* Pa." stands for United States Circuit Court for the Western *District* of Pennsylvania.

*6. "Dialogue."* Used only in citations to the work called "Doctor and Student."

In the Roman system of notation, this letter stands for five hundred; and, when a horizontal dash or stroke is placed above it, it denotes five thousand.

D. B. Defined as day book, double biased, double breasted and, if capitalized, it means Doomsday Book, though there is no authoritative definition of d/b or d/b/a as a symbol or abbreviation in a legal document. City of St. Louis v. Stubley, Mo.App., 154 S.W.2d 407, 410.

D. B. A. Abbreviation for "doing business as." Lieberman v. Atlantic Mut. Ins. Co., 385 P.2d 53, 55, 62 Wash.2d 922.

D. B. E. An abbreviation for *de bene esse, ( q. v.).*

D. B. N. An abbreviation for *de bonis non;* descriptive of a species of administration.

D. C. An abbreviation standing either for "District Court," or "District of Columbia."

D. E. R. I. C. An abbreviation used for *De ea re ita censuere,* (concerning that matter have so decreed,) in recording the decrees of the Roman senate. Tayl. Civil Law, 564, 566.

D. J. An abbreviation for "District Judge."

D. P. An abbreviation for *Domus Procerum,* the house of lords.

D. S. An abbreviation for "Deputy Sheriff." Jones County Land Co. v. Fox, 120 Miss. 798, 83 So. 241, 242.

D. S. B. An abbreviation for *debitum sine brevi,* or *debit sans breve.*

D. W. I. In genealogical tables, a common abbreviation for "died without issue."

DA TUA DUM TUA SUNT, POST MORTEM TUNC TUA NON SUNT. 3 Bulst. 18. Give the things which are yours whilst they are yours; after death they are not yours.

DABIS? DABO. Lat. (Will you give? I will give.) In the Roman law. One of the forms of making a verbal stipulation. Inst. 3, 15, 1; Bract. fol. 15b.

DACION. In Spanish law. The real and effective delivery of an object in the execution of a contract.

DACTYLOGRAPHY. Dactylography is the scientific study of finger prints as a means of identification. State v. Steffen, 210 Iowa, 196, 230 N.W. 536, 537, 78 A.L.R. 748.

DAGGE. A kind of gun. 1 How. State Tr. 1124, 1125.

DAGGER. Any straight knife, worn on person and capable of inflicting death, except pocket knife. Dagger is a generic term covering dirk, stiletto, poniard, etc. People v. Syed Shah, 91 Cal. App. 716, 205 P.2d 1081, 1083.

DAGUS, or DAIS. The raised floor at the upper end of a hall.

DAILY. Every day; every day in the week; every day in the week except one. A newspaper which is published six days in each week is a "daily" newspaper. Richardson v. Tobin, 45 Cal. 30; Tribune Pub. Co. v. Duluth, 45 Minn. 27, 47 N.W. 309; City of Bellingham v. Bellingham Pub. Co., 116 Wash. 65, 198 P. 369; State ex rel. Item Co. v. Commissioner of Public Finances of City of New Orleans, 161 La. 915, 109 So. 675, 676.

DAILY BALANCES, AVERAGE DAILY BALANCE. In school depository law. "Daily balances" means the various balances for the different days in the period for which interest is to be paid, and the "average daily balance" for the interest period means the sum of these daily balances divided by the number of days in the interest period. Jones v. Marrs, 114 Tex. 62, 263 S.W. 570, 574.

DAILY OCCUPATION. The same as "usual occupation". International Brotherhood of Boiler Makers, Iron Shipbuilders & Helpers of America v. Huval, 133 Tex. 136, 126 S.W.2d 476, 478.

DAILY RATE OF PAY. As used in Workmen's Compensation Law. Means one-sixth of the average weekly earnings of the employee during a six-day week. Boyett v. Urania Lumber Co., 8 La. App. 132, 133.

DAILY WAGES. As used in statute authorizing compensation for loss of an eye, means amount

which could be earned by working ordinary number of hours, irrespective of enforced idleness during working hours and overtime employment. Carlson v. Condon-Kiewit Co., 135 Neb. 587, 283 N.W. 220, 221.

DAIRY. An establishment for the sale or distribution of milk or milk products. State v. McCosh, 134 Neb. 780, 279 N.W. 775, 777.

DARER, or DIKER. Ten hides. Blount.

DALE and SALE. Fictitious names of places, used in the English books, as examples "The manor of *Dale* and the manor of *Sale,* lying both in Vale."

DALUS, DAILUS, DAILIA. A certain measure of land; such narrow slips of pasture as are left between the plowed furrows in arable land. Cowell.

DAM. A construction of wood, stone, reinforced concrete or other materials, made across a stream for the purpose of penning back the waters. This word is used in two different senses. It properly means the work or structure, raised to obstruct the flow of the water in a river; but, by a well-settled usage, it is often applied to designate the pond of water created by this obstruction. Burnham v. Kempton, 44 N.H. 89; Colwell v. Water Power Co., 19 N.J.Eq. 248; Mining Co. v. Hancock, 101 Cal. 42, 31 P. 112; State ex rel. Priegel v. Northern States Power Co., 242 Wis. 345, 8 N.W. 2d 350, 352.

DAMAGE. Loss, injury, or deterioration, caused by the negligence, design, or accident of one person to another, in respect of the latter's person or property. The word is to be distinguished from its plural,-"damages,"-which means a compensation in money for a loss or damage. An injury produces a right in them who have suffered any damage by it to demand reparation of such damage from the authors of the injury. By damage, we understand every loss or diminution of what is a man's own, occasioned by the fault of another. 1 Ruth. Inst. 399.

The harm, detriment, or loss sustained by reason of an injury. Yazoo & M. V. R. Co. v. Fields, 188 Miss. 725, 195 So. 489, 490.

Synonymous with "condemnation money." State v. Hale, Tex.Civ.App., 96 S.W.2d 135, 139. "Injury". Dohring v. Kansas City, 228 Mo.App. 519, 71 S.W.2d 170, 171. "Loss." Glinz v. State, 70 N.D. 776, 298 N.W. 238, 239; Wells v. Thomas W. Garland, Inc., Mo., 39 S.W.2d 409, 411.

DAMAGE-CLEER. A fee assessed of the tenth part in the common pleas, and the twentieth part in the queen's bench and exchequer, out of all damages exceeding five marks recovered in those courts, in actions upon the case, covenant, trespass, etc., wherein the damages were uncertain; which the plaintiff was obliged to pay to the prothonotary or the officer of the court wherein he recovered, before he could have execution for the damages. This was originally a gratuity given to the prothonotaries and their clerks for drawing special writs and pleadings; but it was taken away by statute, since which, if any officer in these courts took any money in the name of damage-deer, or anything in lieu thereof, he forfeited treble the value. Wharton.

DAMAGE FEASANT or FAISANT. Doing damage. A term applied to a person's cattle or beasts found upon another's land, doing damage by treading down the grass, grain, etc. 3 Bl. Comm. 7, 211; Tomlins. This phrase seems to have been introduced in the reign of Edward III, in place of the older expression *"en son damage,"* (in damno *suo.)* Crabb, Eng. Law, 292.

DAMAGE TO PERSON. Bodily or physical injury directly resulting from wrongful act, whether lying in trespass or trespass on the case, and does not include torts directly affecting the person but affecting only the feelings and reputation. Young v. Aylesworth, 35 R.I. 259, 86 A. 555, 556; Texas Employers' Ins. Ass'n v. Jimenez, Tex.Civ. App., 267 S.W. 752, 758; Howard v. Lunaburg, 192 Wis. 507, 213 N.W. 301, 303; Wilson v. Grace, 273 Mass. 146, 173 N.E. 524, 528.

DAMAGE TO TWO PERSONS. In bond for payment of damages that limited amount payable for any one accident. Where widow sued to recover damages to deceased and his estate and also her pecunary loss, there was "damage to two persons" within the bond. Ehlers v. Gold, 169 Wis. 494, 173 N.W. 325, 327.

DAMAGED. Made less valuable, less useful, or less desirable. Cleveland, C., C. & St. L. Ry. Co. v. Mumford, 208 Ind. 655, 197 N.E. 826, 835.

Synonymous with term "injuriously affected" within eminent domain statutes. Alabama Power Co. *v.* City of Guntersville, 235 Ala. 136, 177 So. 332, 337, 114 A.L.R. 181; term "injuriously affected" as used in condemnation statutes, is synonymous. Hirt *v.* City of Casper, 56 Wyo. 57, 103 P.2d 394, 398.

DAMAGED GOODS. Goods, subject to duties, which have received some injury either in the voyage home or while bonded in warehouse.

DAMAGES. A pecuniary compensation or indemnity, which may be recovered in the courts by any person who has suffered loss, detriment, or injury, whether to his person, property, or rights, through the unlawful act or omission or negligence of another. Scott v. Donald, 165 U.S. 58, 17 S.Ct. 265, 41 L.Ed. 632; Wainscott v. Loan Ass'n, 98 Cal. 253, 33 P. 88; Strong v. Neidermeier, 230 Mich. 117, 202 N.W. 938, 940; Greer v. Board of Com'rs of Knox County, 33 Ohio App. 539, 169 N. E. 709, 710.

Compensation for the loss or injury suffered. Holmes Electric Protective Co. of Philadelphia v. Goldstein, 147 Pa. Super. 506, 24 A.2d 161, 165; In re Rushford's Estate, 111 Vt. 494, 18 A.2d 175, 176; Brown v. Cummins Distilleries Corporation, D.C.Ky., 56 F.Supp. 941, 942. A just compensation or reparation for a loss or injury sustained. McNaghten Loan Co. v. Sandifer, 137 Kan. 353, 20 P.2d 523, 526. All factors going to make up total amount which plaintiff may recover under correct principles of law. Binder v. Harris, 267 *Mass.* 162, 166 N.E. 707, 708. Reasonable compensation for legal injury. Sechrist v. Bowman, 307 Pa. 301, 161 A. 332, 335. The award made to *a* person because of a legal wrong done to him by another. Eklund *v.* Evans, 211 Minn. 164, 300 N.W. 617, 619. The estimated reparation in money for detriment or injury sustained, and

as payment for or indemnity for injuries. Sycamore Preserve Works v. Chicago & N. W. R. Co., 284 I11. App. 445, 1 N.E.2d 522, 526. The pecuniary compensation, recompense, or satisfaction for an injury sustained, Fogle v. Frazel, 201 La. 899, 10 So.2d 695, 698. A sum awarded as a fair measure of compensation to plaintiff, the amount being, as near as can be estimated, that by which he is the worse for the defendant's wrongdoing. Chafin v. Gay Coal & Coke Co., 113 W.Va. 823, 169 S.E. 485, 487. A sum of money assessed by a jury on finding for the plaintiff or successful party in an action, as a compensation for the injury done him by the opposite party. 2 BI.Comm. 438; Co.Litt. 257a; 2 Tidd, Pr. 869, 870. In its early signification the term included "costs", the terms are now regarded as distinct, State ex rel. Marcri v. City of Bremerton, 8 Wash.2d 93, 111 P.2d 612, 616. Synonymous with: "compensation", Maryland Casualty Co. v. Pitman, 70 Ga.App. 670, 29 S.E.2d 102; "condemnation money", Eldridge v. Sutton, 171 Okl. 11, 41 P.2d 680, 682; "judgment", Stearns v. Ritchie, 128 Me. 368, 147 A. 703, 705. In the ancient usage, the word "damages" was employed in two significations. According to Coke, its proper and general sense included the costs of suit, while its strict or relative sense was exclusive of costs. 10 Coke, 116, 117; Co.Litt. 257a; 9 East, 299. The latter meaning has alone survived.

### Actual damages

Real, substantial and just damages, or the amount awarded to a complainant in compensation for his actual and real loss or injury, as opposed on the one hand to "nominal" damages, and on the other to "exemplary" or "punitive" damages. Ross v. Leggett, 61 Mich. 445, 28 N.W. 695, 1 Am.St.Rep. 608; Gatzow v. Buening, 106 Wis. 1, 81 N.W. 1003, 49 L.R.A. 475; Osborn v. Leach, 135 N.C. 628, 47 S.E. 811, 66 L.R.A. 648; Winans v. Chapman, 104 Kan. 664, 180 P. 266, 267. Synonymous with "compensatory damages" and with "general damages." Ringgold v. Land, 212 N.C. 369, 193 S.E. 267, 268; News Leader Co. v. Kocen, 173 Va. 95, 3 S.E.2d 385, 391, 122 A.L.R. 842; Anderson v. Alcus, Tex.Civ.App., 42 S.W.2d 294, 296.

### Affirmative damages

In admiralty law, the damages which a respondent in a libel for injuries to a vessel may recover, which may. be in excess of any amount which the libellant would be entitled to claim. Ebert v. The Reuben Doud, D.C.Wis., 3 F. 520.

### Civil damages

Those awarded against a liquor-seller to the relative, guardian, or employer of the person to whom the sales were made, on a showing that the plaintiff has been thereby injured in person, property, or means of support. Headington v. Smith, 113 Iowa 107, 84 N.W. 982.

### Compensatory damages

Compensatory damages are such as will compensate the injured party for the injury sustained, and nothing more; such as will simply make good or replace the loss caused by the wrong or injury. McKnight v. Denny, 198 Pa. 323, 47 A. 970; Wade v. Power Co., 51 S.C. 296, 29 S.E. 233, 64 Am.St.Rep. 676; Gatzow v. Buening, 106 Wis. 1, 81 N.W. 1003, 49 L.R.A. 475.

### Consequential damages

Such damage, loss, or injury as does not flow directly and immediately from the act of the party, but only from some of the consequences or results of such act. Swain v. Copper Co., 111 Tenn. 430, 78 S.W. 93; McKibbin v. Pierce, Tex.Civ.App., 190 S.W. 1149, 1151; Mawson v. Vess Beverage Co., Mo.App., 173 S.W.2d 606, 613; U. S. v. Chicago, B. & Q. R. Co., C.C.A.Minn., 82 F.2d 131, 136, 106 A.L.R. 942.

The term means sometimes damage which is so remote as not to be actionable; sometimes damage which, though somewhat remote, is actionable; or damage which, though actionable, does not follow immediately, in point of time, upon the doing of the act complained of. Eaton v. Railroad Co., 51 N.H. 504, 12 Am.Rep. 147.

### Contingent damages

Where a demurrer has been filed to one or more counts in a declaration, and its consideration is postponed, and meanwhile other counts in the same declaration, not demurred to, are taken as issues, and tried, and damages awarded upon them, such damages are called "contingent damages."

### Continuing damages

Are such as accrue from the same injury, or from the repetition of similar acts, between two specified periods of time.

### Damages ultra

Additional damages claimed by a plaintiff not satisfied with those paid into court by the defendant.

### Direct damages

Direct damages are such as follow immediately upon the act done; Eaton v. Railroad Co., 51 N.H. 504, 12 Am.Rep. 147; City of Dublin v. Ogburn, 142 Ga. 840, 83 S.E. 939; McKibbin V. Pierce, Tex. Civ.App., 190 S.W. 1149, 1151; Washington & 0. D. Ry. v. Westinghouse Electric & Mfg. Co., 120 Va. 620, 89 S.E. 131, 133.

### Double damages

Twice the amount of actual damages as found by the verdict of a jury allowed by statute in some cases of injuries by negligence, fraud, or trespass. Cross v. United States, 6 Fed.Cas. 892; Daniel v. Vaccaro, 41 Ark. 329.

### Excessive damages

Damages awarded by a jury which are grossly in excess of the amount warranted by law on the facts and circumstances of the case; unreasonable or outrageous damages. Taylor v. Giger, Hardin, Ky., 587; Harvesting Mach. Co. v. Gray, 114 Ind. 340, 16 N.E. 787.

### Exemplary damages

Exemplary damages are damages on an increased scale, awarded to the plaintiff over and above what will barely compensate him for his property loss, where the wrong done to him was aggravated by circumstances of violence, oppression, malice, fraud, or wanton and wicked conduct on the part of the defendant, and are intended to solace the plaintiff for mental anguish, laceration of his feelings, shame, degradation, or other ag-

gravations of the original wrong, or else to punish the defendant for his evil behavior or to make an example of him, for which reason they are also called "punitive" or "punitory" damages or "vindictive" damages, and (vulgarly) "smart-money." Springer v. Fuel Co., 196 Pa.St. 156, 46 A. 370; Scott v. Donald, 165 .U.S. 58, 17 S.Ct. 265, 41 L.Ed. 632; Gillingham v. Railroad Co., 35 W.Va. 588, 14 S.E. 243, 14 L.R.A. 798; Murphy v. Hobbs, 7 Colo. 541, 5 P. 119, 49 Am.Rep. 366. It is said that the idea of punishment does not enter into the definition; the term being employed to mean an increased award in view of supposed aggravation of the injury to the feelings of plaintiff by the wanton or reckless act of defendant. Brause v. Brause, 190 Iowa 329, 177 N.W. 65, 70.

Fair damages

See Fair Damages.

Fee damages

Damages sustained by and awarded to an abutting owner of real property occasioned by the construction and operation of an elevated railroad in a city street, are so called, because compensation is made to the owner for the injury to, or deprivation of, his easements of light, air, and access, and these are parts of the fee. Dode v. Railway Co., 70 Hun, 374, 24 N.Y.S. 422; People v. Barker, 165 N.Y. 305, 59 N.E. 151.

General damages

General damages are such as the law itself implies or presumes to have accrued from the wrong complained of, for the reason that they are its immediate, direct, and proximate result, or such as necessarily result from the injury, or such as did in fact result from the wrong, directly and proximately, and without reference to the special character, condition, or circumstances of the plaintiff. Mood v. Telegraph Co., 40 S.C. 524, 19 S.E. 67; Hopkins v. Veo, 98 Vt. 433, 129 A. 157, 158; United States Frumentum Co. v. Lauhoff, C.C.A.Mich., 216 F. 610, 617; Kane v. New Idea Realty Co., 104 Conn. 508, 133 A. 686, 687.

Imaginary damages

This term is sometimes used as equivalent to "exemplary," "vindictive," or "punitive" damages. Murphy v. Hobbs, 7 Colo. 541, 5 P. 119, 49 Am. Rep. 366.

Inadequate damages

Damages are called "inadequate," within the rule that an injunction will not be granted where adequate damages at law could be recovered for the injury sought to be prevented, when such a recovery at law would not compensate the parties and place them in the position in which they formerly stood. Insurance Co. v. Bonner, 7 Colo. App. 97, 42 P. 681.

Intervening damages

Such damages to an appellee as result from the delay caused by the appeal. McGregor v. Balch, 17 Vt. 568; Roberts v. Warner, 17 Vt. 46, 42 Am. Dec. 478.

Irreparable damages

In the law pertaining to injunctions, damages for which no certain pecuniary standard exists for measurement. Philadelphia Ball Club, Limited, v. Lajoie, 202 Pa. 210, 51 A. 973, 58 L.R.A. 227. Damages not easily ascertainable at law. Krich v. Zemel, 96 N.J.Eq. 208, 124 A. 449, 450. With reference to public nuisances which a private party may enjoin, the term includes wrongs of a repeated and continuing character, or which occasion damages estimable only by conjecture, and not by any accurate standard. Bernard v. Willamette Box & Lumber Co., 64 Or. 223, 129 P. 1039, 1042.

Land damages

A term sometimes applied to the amount of compensation to be paid for land taken under the power of eminent domain or for injury to, or depreciation of, land adjoining that taken. People v. Hilts, 27 Misc.Rep. 290, 58 N.Y.S. 434; In re Lent, 47 App.Div. 349, 62 N.Y.S. 227.

Liquidated damages and penalties

The term is applicable when the amount of the damages has been ascertained by the judgment in the action, or when a specific sum of money has been expressly stipulated by the parties to a bond or other contract as the amount of damages to be recovered by either party for a breach of the agreement by the other. Keeble v. Keeble, 85 Ala. 552, 5 So. 149; Eakin v. Scott, 70 Tex. 442, 7 S.W. 777; Cochrane v. Forbes, 267 Mass. 417, 166 N.E. 752, 753; Varno v. Tindall, 164 Tenn. 642, 51 S.W. 2d 502, 503; Norwood Morris Plan Co. v. McCarthy, 295 Mass. 597, 4 N.E.2d 450, 454, 107 A.L.R. 1215; Factory Realty Corporation v. Corbin-Holmes Shoe Co., 312 Mass. 325, 44 N.E.2d 671, 674. The purpose of a penalty is to secure performance, while the purpose of stipulating damages is to fix the amount to be paid in lieu of performance. Christianson v. Haugland, 163 Minn. 73, 203 N.W. 433, 434; Davidow v. Wadsworth Mfg. Co., 211 Mich. 90, 178 N.W. 776, 777, 12 A.L.R. 605; Forsyth v. Central Foundry Co., 240 Ala. 277, 198 So. 706, 710. The essence of a penalty is a stipulation as in terrorem while the essence of liquidated damages is a genuine covenanted preestimate of such damages. Shields v. Early, 132 Miss. 282, 95 So. 839, 840. For other cases pertaining to the distinction between a penalty and liquidated damages, see Fiscal Court of Franklin County v. Kentucky Public Service Co., 181 Ky. 245, 204 S.W. 77, 79; In re Liberty Doll Co., D.C. N.Y., 242 F. 695, 701; Miller v. Blockberger, 111 Ohio St. 798, 146 N.E. 206, 209; Armstrong v. Irwin, 26 Ariz. 1, 221 P. 222, 225, 32 A.L.R. *609*.

Necessary damages

A term said to be of much wider scope in the law of damages than "pecuniary." It embraces all those consequences of an injury usually denominated "general" damages, as distinguished from special damages; whereas the phrase "pe-

cuniary damages" covers a smaller class of damages within the larger class of "general" damages. Browning v. Wabash Western R. Co., Mo., 24 S. W. 746.

Nominal damages

Nominal damages are a trifling sum awarded to a plaintiff in an action, where there is no substantial loss or injury to be compensated, but still the law recognizes a technical invasion of his rights or a breach of the defendant's duty, or in cases where, although there has been a real injury, the plaintiff's evidence entirely fails to show its amount. Seeling v. Missouri, K. & T. Ry. Co., 287 Mo. 343, 230 S.W. 94, 102; City of Rainier v. Masters, 79 Or. 534, 155 P. 1197, 1198, L.R.A. 1916E, 1175; Springer v. Fuel Co., 196 Pa. 156, 46 A. 370.

Pecuniary damages

Such as can be estimated in and compensated by money; not merely the loss of money or salable property or rights, but all such loss, deprivation, or injury as can be made the subject of cal: culation and of recompense in money. Walker v. McNeill, 17 Wash. 582, 50 P. 518; Davidson Benedict Co. v. Severson, 109 Tenn. 572, 72 S.W. 967.

Permanent damages

Damages awarded on theory that cause of injury is fixed and that the property will always remain subject to it. Chambers v. Spruce Lighting Co., 81 W.Va. 714, 95 S.E. 192, 194.

Presumptive damages

A term occasionally used as the equivalent of "exemplary" or "punitive" damages. Murphy v. Hobbs, 7 Colo. 541, 5 P. 119, 49 Am.Rep. 366.

Prospective damages

Damages which are expected to follow from the act or state of facts made the basis of a plaintiff's suit; damages which have not yet accrued, at the time of the trial, but which, in the nature of things, must necessarily, or most probably, result from the acts or facts complained of.

Proximate damages

Proximate damages are the immediate and direct damages and natural results of the act complained of, and such as are usual and might have been expected. Remote damages are those attributable immediately to an intervening cause, though it forms a link in an unbroken chain of causation, so that the remote damage would not have occurred if its elements had not been set in motion by the original act or event. Pielke v. Railroad Co., 5 Dak. 444, 41 N.W. 669; Chambers v. Everding & Farrell, 71 Or. 521, 143 P. 616, 619.

Remote damages

The unusual and unexpected result, not reasonably to be anticipated from an accidental or unusual combination of circumstances-a result beyond which the negligent party has no control. Chambers v. Everding & Farrel, 71 Or. 521, 143 P. 616, 620.

Damage is said to be too remote to be actionable when it is not the legal and natural consequence of the act complained of.

The terms "remote damages" and "consequential damages" are not synonymous nor to be used interchangeably; all remote damage is consequential, but it is by no means true that all consequential damage is remote. Eaton v. Railroad Co., 51 N.H. 511, 12 Am.Rep. 147; Chambers v. Everding & Farrell, 71 Or. 521, 143 P. 616, 620.

Special damages

Those which are the actual, but not the necessary, result of the injury complained of, and which in fact follow it as a natural and proximate consequence in the particular case, that is, by reason of special circumstances or conditions. Wallace v. Ah Sam, 71 Cal. 197, 12 P. 46, 60 Am. Rep. 534; Lawrence v. Porter, C.C.A.Mich., 63 F. 62, 11 C.C.A. 27, 26 L.R.A. 167; Huyler's v. Ritz-Carlton Restaurant & Hotel Co. of Atlantic City, D.C.Del., 6 F.2d 404, 406. Those which are the natural, but not the necessary, result of the injury. Butte Floral Co. v. Reed, 65 Mont. 138, 211 P. 325, 330; Ralph N. Blakeslee Co. v. Rigo, 94 Conn. 481, 109 A. 173,175; Erick Bowman Remedy Co. v. Jensen Salsbery Laboratories, C.C.A.Minn., 17 F.2d 255, 259, 52 A.L.R. 1187.

Speculative damages

Prospective or anticipated damages from the same acts or facts constituting the present cause of action, but which depend upon future developments which are contingent, conjectural, or improbable.

Substantial damages

A sum, assessed by way of damages, which is worth having; opposed to nominal damages, which are assessed to satisfy a bare legal right. Wharton. Considerable in amount and intended as a real compensation for a real injury.

Temporary damages

Damages allowed for intermittent and occasional wrongs, such as injuries to real estate, where cause thereof is removable or abatable. Chambers v. Spruce Lighting Co., 81 W.Va. 714, 95 S.E. 192, 194.

Unliquidated damages

Such as are not yet reduced to a certainty in respect of amount, nothing more being established than the plaintiff's right to recover; or such as cannot be fixed by a mere mathematical calculation from ascertained data in the case. Cox v. McLaughlin, 76 Cal. 60, 18 P. 100, 9 Am. St.Rep. 164; Cook Pottery Co. v. Parker, 86 W. Va. 580, 104 S.E. 51, 53; United Cigarette Mach. Co. v. Brown, 119 Va. 813, 89 S.E. 850, 855, L.R.A. 1917A, 1190; Simons v. Douglas Ex'r, 189 Ky. 644, 225 S.W. 721, 723.

DAMAIOUSE. In old English law. Causing damage or loss, as distinguished from *torcenouse,* wrongful. Britt. c. 61.

DAME. In English law. The legal designation of the wife of a knight or baronet.

DAMN, v. To invoke condemnation, curse, swear, condemn to eternal punishment, or consign to perdition. Orf v. State, 147 Miss. 160, 113 So. 202.

DAMNA. Damages, both inclusive and exclusive of costs.

DAMNATUS. In old English law. Condemned; prohibited by law; unlawful. *Damnatus coitus,* an unlawful sexual connection.

DAMNI INJURLE ACTIO. An action given by the civil law for the damage done by one who intentionally injured the slave or beast of another. Calvin.

DAMNIFICATION. That which causes damage or loss.

DAMNIFY. To cause damage or injurious loss to a person or put him in a position where he must sustain it. A surety is "damnified" when a judgment has been obtained against him. McLean v. Bank, 16 Fed.Cas. 278.

DAMNOSA HiEREDITAS. In the civil law. A losing inheritance; an inheritance that was a charge, instead of a benefit. Dig. 50, 16, 119.

The term has also been metaphorically applied to that species of property of a bankrupt which, so far from being valuable, would be a charge to the creditors; for example, a term of years where the rent would exceed the revenue. 7 East, 342; 3 Camp. 340; 1 Esp.N.P. 234; Provident L. & Trust Co. v. Fidelity, etc., Co., 203 Pa. 82, 52 A. 34.

DAMNUM. Lat.

In the Civil Law

Damage; the loss or diminution of what is a man's own, either by fraud, carelessness, or accident.

In Pleading and Old English Law

Damage; loss.

DAMNUM ABSQUE INJURIA. Loss, hurt, or harm without injury in the legal sense, that is, without such breach of duty as is redressible by an action. A loss which does not give rise to an action for damages against the person causing it. West Virginia Transp. Co. v. Standard Oil Co., 50 W.Va. 611, 40 S.E. 591, 56 L.R.A. 804; J. A. & C. E. Bennett v. Winston-Salem Southbound Ry. Co., 170 N.C. 389, 87 S.E. 133, 134, L.R.A.1916D, 1074; Wisconsin Telephone Co. v. Railroad Commission of Wisconsin, 162 Wis. 383, 156 N.W. 614, 619, L. R.A.1916E, 748; Cleveland, C., C. & St. L. Ry. Co. v. Mumford, 208 Ind. 655, 197 N.E. 826, 834; Alabama Power Co. v. Ickes, App.D.C., 302 U.S. 464, 58 S.Ct. 300, 303, 82 L.Ed. 374.

DAMNUM FATALE. Fatal damage; damage from fate; loss happening from a cause beyond human control, *(quod ex fato contingit,)* or an act of God, for which bailees are not liable; such as shipwreck, lightning, and the like. Dig. 4, 9, 3, 1; Story, Bailm. § 465. The civilians included in the phrase *"damnum fatale"* all those accidents which are summed up in the common-law expression, "Act of God or public enemies;" though, perhaps, it embraced some which would not now be admitted as occurring from an irresistible force. Thickstun v. Howard, 8 Blackf. Ind. 535.

DAMNUM INFECTUM. In Roman law. Damage not yet committed, but threatened or impending. A preventive interdict might be obtained to prevent such damage from happening; and it was treated as a *quasi-delict,* because of the imminence of the danger.

DAMNUM REI AMISSAE. In the civil law. A loss arising from a payment made by a party in consequence of an error of law. Mackeld. Rom. Law, § 178.

DAMNUM SINE INJURIA. ESSE POTEST. Lofft, 112. There may be damage or injury inflicted without any act of injustice.

DAN. Anciently the better sort of men in England had this title; so the Spanish *Don.* The old term of honor for men, as we now say Master or Mister. Wharton.

DANCEHALL. A place maintained for promiscuous and public dancing, the rules for admission to which are not based upon personal selection or invitation. State v. Loomis, 75 Mont. 88, 242 P. 344, 347; People v. Dever, 237 Ill.App. 65, 69.

DANEGELT, DANEGELD. A tribute originally of 1s. and afterwards of 2s., which came to be imposed upon every hide of land through the realm, levied by the Anglo-Saxons, for maintaining (it is supposed) such a number of forces as were thought sufficient to clear the British seas of Danish pirates, who greatly annoyed their coasts, or to buy off the ravages of Danish invaders. It continued a tax until the time of Stephen, and was one of the rights of the crown. Wharton; Webster, Dict. The Danegeld was levied as a landtax by the Norman kings; it disappears under that name after 1163, but in fact continued under the name of *tallage.* 3 New English Dict. 26.

DANELAGE. A system of laws, introduced by. the Danes on their invasion and conquest of England, which was principally maintained in some of the midland counties, and also on the eastern coast. 1 Bl.Comm. 65; 4 Bl.Comm. 411; 1 Steph. Comm. 42.

DANGER. Jeopardy; exposure to loss or injury; peril. U. *S.* v. Mays, 1 Idaho, 770; State v. Londe, 345 Mo. 185, 132 S.W.2d 501, 506.

DANGER ZONE. The "danger zone" within contemplation of the humanitarian doctrine depends upon the facts in the particular case. Brown v. Alton R. Co., Mo.App., 132 S.W.2d 713, 727; Brown v. Alton R. Co., 236 Mo.App. 26, 151 S.W.2d 727, 742.

Dangers of Navigation

The same as "dangers of the sea" or "perils of the sea." See Dangers of the sea, *infra.*

Dangers of the River

This phrase, as used in bills of lading, means only the natural accidents incident to river navigation, and does not embrace such as may be avoided by the exercise of that skill, judgment, or foresight which are demanded from persons in a particular occupation. Hill v. Sturgeon, 35 Mo. 213, 86 Am.Dec. 149. It includes dangers arising from unknown reefs which have suddenly formed in the channel, and are not discoverable by care and skill. Hill v. Sturgeon, 35 Mo. 213, 86 Am. Dec. 149; Hibernia Ins. Co. v. Transp. Co., 120 U. S. 166, 7 S.Ct. 550, 30 L.Ed. 621; Johnson v. Friar, 4 Yerg. 48, 26 Am.Dec. 215.

Dangers of the Road

This phrase, in a bill of lading, when it refers to inland transportation, means such dangers as are immediately caused by roads, as the overturning of carriages in rough and precipitous places. 7 Exch. 743.

Dangers of the Sea

The expression "dangers of the sea" means those accidents peculiar to navigation that are of an extraordinary nature, or arise from irresistible force or overwhelming power, which cannot be guarded against by the ordinary exertions of human skill and prudence. The Portsmouth, 9 Wall. 682, 19 L.Ed. 754; Hibernia Ins. Co. v. Transp. Co., 120 U.S. 166, 7 S.Ct. 550, 30 L.Ed. 621; The Maumee, D.C.N.C., 260 F. 862, 870; equivalent to "dangers of navigation." Norris Grain Co. v. Great Lakes Transit Corporation, C.C.A.I11., 70 F. 2d 32, 34.

DANGERIA. In old English law. A money payment made by forest-tenants, that they might have liberty to plow and sow in time of pannage, or mast feeding.

DANGEROUS. Attended with risk; perilous; hazardous; unsafe. Scales v. Lewellyn, 172 N.C. 494, 90 S.E. 521, 522; King v. Smythe, 140 Tenn. 217, 204 S.W. 296, 297, L.R.A.1918F, 293; Bentson v. Brown, 186 Wis. 629, 203 N.W. 380, 382, 38 A.L. R. 1417; Davis v. East Contra Costa Irr. Dist., Cal.App., 109 P.2d 986, 989.

DANGEROUS MACHINE. A machine is "dangerous" in such sense that the employer is required to guard it, if, in the ordinary course of human affairs, danger may be reasonably anticipated from the use of it without protection. Simon v. St. Louis Brass Mfg. Co., 298 Mo. 70, 250 S.W. 74, 76.

DANGEROUS PER SE. A thing that may inflict injury without the immediate application of human aid or instrumentality. Southern Cotton Oil Co. v. Anderson, 80 Fla. 441, 86 So. 629, 632, 16 A. L.R. 255.

DANGEROUS PLACE. One where there is considerable risk, or danger, or peril, one where accidents or injuries are very apt to occur. Henrie v. Rocky Mountain Packing Corp., Utah, 196 P.2d 487, 489.

DANGEROUS WEAPON. One dangerous to life; one by the use of which a fatal wound may probably or possibly be given. As the manner of use enters into the consideration as well as other circumstances, the question is often one of fact for the jury, but not infrequently one of law for the court. U. S. v. Reeves, C.C.Tex., 38 F. 404; Parman v. Lemmon, 119 Kan. 323, 244 P. 227, 229, 44 A.L.R. 1500; State v. Penton, 157 La. 68, 102 So. 14, 15; deadly weapon distinguished State v. Walden, 41 N.M. 418, 70 P.2d 149, 150; Crawford v. State, 174 Md. 175, 197 A. 866, 867.

DANISM. The act of lending money on usury.

DANO. In Spanish law. Damage; the deterioration, injury, or destruction which a man suffers with respect to his person or his property by the fault *(culpa)* of another. White, New Recop. b. 2, tit. 19, c. 3, § 1.

DANS ET RETINENS, NIHIL DAT. One who gives and yet retains does not give effectually. Tray. Lat. Max. 129. Or, one who gives, yet retains, [possession,) gives nothing.

DAPIFER. A steward either of a king or lord. Spelman.

DARE. Lat. In the civil law. To transfer property. When this transfer is made in order to discharge a debt, it is *datio solvendi animo;* when in order to receive an equivalent, to create an obligation, it is *datio contrahendi animo;* lastly, when made *donandi animo,* from mere liberality, it is a gift, dono *datio.*

DARE AD REMANENTIAM. To give away in fee, or forever.

DARRAIGN. To clear a legal account; to answer an accusation; to settle a controversy.

DARREIN. L. Fr. Last.

DARREIN CONTINUANCE. The last continuance.

DARREIN PRESENTMENT. In old English law. The last presentment. See Assise of darrein presentment.

DARREIN SEISIN. Last seisin. A plea which lay in some cases for the tenant in a writ of right. See 1 Rosc. Real Act. 206; Hunt v. Hunt, 3 Metc. Mass. 184; Jackson, Real Act. 285. See 1 Roscoe, Real Act. 206; 2 Prest. Abstr. 345.

DASH. The em dash (-) or the en dash (-) is often used to indicate the omission of the intermediate terms of a series which are to be supplied in reading, being thus often equivalent to * * * inclusive; thus Mark iv, 3-20 (that is, verses 3

to 20, inclusive) ; the years 1880-1888 (that is, 1880 to 1888). Booe v. Sims, 139 Ark. 595, 215 S.W. 659, 660.

DATA. In old practice and conveyancing. The date of a deed; the time when it was *given;* that is, executed. Grounds whereon to proceed; facts from which to draw a conclusion.

DATE. The specification or mention, in a written instrument, of the time (day, month and year) when it was made. Also the time so specified. Interior Linseed Co. v. Becker-Moore Paint Co., 273 Mo. 433, 202 S.W. 566, 569; In re Carpenter's Estate, 172 Cal. 268, 156 P. 464, 465, L.R.A.1916E, 498; State v. Beckley, 192 Wis. 367, 212 N.W. 792, 793; Heller v. Sweeney, 101 N.J.Eq. 150, 135 A. 264, 265.

The word is derived from the Latin word "datum" meaning given and is defined as the time given or specified-in some way ascertained and fixed. The time when an instrument was made, acknowledged, delivered or recorded; the clause or memorandum which specifies that fact; and the time from which its operation is to be reckoned. In re Irvine's Estate, 114 Mont. 577, 139 P.2d 489, 490, 491, 47 A.L.R. 882.

That part of a deed or writing which expresses the day of the month and year in which it was made or *given.* 2 Bl.Comm. 304; Tomlins.

The primary signification of *date* is not time in the abstract, nor time taken absolutely, but time given or specified; time in some way ascertained and fixed. When we speak of the date of a deed, date of issue of a bond or date of a policy, we do not mean the time when it was actually executed, but the time of its execution, as given or stated in the deed itself. The date of an item, or of a charge in a book-account, is not necessarily the time when the article charged was, in fact, furnished, but rather the time given or set down in the account, in connection with such charge. And so the expression "the date of the last work done, or materials furnished," in a mechanic's lien law, may be taken, in the absence of anything in the act indicating a different intention, to mean the time when such work was done or materials furnished, as specified in the plaintiff's written claim. Bement v. Manufacturing Co., 32 N.J.Law, 513; Mutual Life Ins. Co. of New York v. Hurni Packing Co., 263 U.S. 167, 44 S.Ct. 90, 68 L.Ed. 235, 31 A.L.R. 102; Mutual Life Ins. Co. of New York v. Hurni Packing Co., C.C.A.Iowa, 280 F. 18, 20; Turner v. Roseberry Irr. Dist., 33 Idaho, 746, 198 P. 465, 467.

The precise meaning of date, however, depends upon context, since there are numerous instances when it means actual as distinguished from conventional time. Buckhannon & N. R. Co. v. Great Scott Coal & Coke Co., 75 W. Va. 423, 83 S.E. 1031, 1033; London Guarantee & Accident Co. v. Empire Plow Co., 115 Ohio St. 684, 155 N.E. 382, 384; National Liberty Ins. Co. v. Norman, C.C.A.N.C., 11 F.2d 59, 61; Cantrell v. Prudential Ins. Co. of America, 189 Wash. 99, 63 P.2d 509, 510.

DATE CERTAINE. In French law. A deed is said to have a *date certaine* (fixed date) when it has been subjected to the formality of registration; after this formality has been complied with, the parties to the deed cannot by mutual consent change the date thereof. Arg. Fr. Merc. Law, 555.

DATE OF INJURY. Means inception date of the injury and is regarded as coincident with date of occurrence or happening of accident which caused such injury. Indemnity Ins. Co. of North America v. Williams, 129 Tex. 51, 99 S.W.2d 905, 907; Associated Indemnity Corporation v. State Industrial Accident Commission, 124 Cal.App. 378, 12 P.2d 1075, 1076; Larson v. Industrial Commission, 224 Wis. 294, 271 N.W. 835, 836. Date of the compensable injury and not date of accident or occurrence from which incapacity resulted. Rossi V. Thomas F. Jackson Co., 120 Conn. 456, 181 A. 539.

"DATE OF ISSUE." When applied to notes, bonds, etc., of series, usually means an arbitrary date fixed as beginning of term for which they run, without reference to precise time when convenience or state of market may permit their sale or delivery, date which bonds and stocks bear, and not date when they were actually issued in sense of being signed and delivered and put into circulation. Whetstone v. City of Stuttgart, 193 Ark. 88, 97 S.W.2d 641, 643.

The words in life policy were held not to mean the date of actual execution or the delivery date, but the date set forth in the policy itself. Potts v. Metropolitan Life Ins. Co., 133 Pa.Super. 397, 2 A.2d 870, 872.

DATIO. In the civil law. A giving, or act of giving. *Datio in solutum;* a giving in payment; a species of accord and satisfaction. Called, in modern law, "dation."

DATION. In the civil law. A gift; a giving of something. It is not exactly synonymous with "donation," for the latter implies generosity or liberality in making a gift, while dation may mean the giving of something to which the recipient is already entitled.

DATION EN PAIEMENT. In French law. A giving by the debtor and receipt by the creditor of something in payment of a debt, instead of a sum of money. It is somewhat like the accord and satisfaction of the common law. 16 Toullier, no. 45; Poth. Vente, no. 601.

DATIVE. A word derived from the Roman law, signifying "appointed by public authority." Thus, in Scotland, an executor-dative is an executor appointed by a court; corresponding or equivalent to an English *administrator* or "administrator with the will annexed." Mozley & Whitley. In old English law. In one's gift; that may be given and disposed of at will and pleasure.

DATUM. A first principle; a thing given; a date.

DATUR DIGNIORI. It is given to the more worthy. 2 Vent. 268.

DAUGHTER. An immediate female descendant. People v. Kaiser, 119 Cal. 456, 51 P. 702. May include the issue of a daughter. Buchanan v. Lloyd,

88 Md. 462, 41 A. 1075; Jamison v. Hay, 46 Mo. 546. May designate a natural or illegitimate female child, State v. Laurence, 95 N.C. 659, not an adopted daughter, a stepdaughter, or daughter-in-law. State v. Youst, 74 Ohio App. 381, 59 N.E.2d 167, 168.

The female offspring of a man or woman. State v. Lee, 196 Miss. 311, 17 So.2d 277, 278, 151 A.L.R. 1143.

DAUGHTER-IN-LAW. The wife of one's son.

DAUPHIN. In French law. The title of the eldest sons of the kings of France. Disused since 1830.

DAY. 1. A period of time consisting of twenty-four hours and including the solar day and the night. Co. Litt. 135a; Fox v. Abel, 2 Conn. 541.

2. The period of time during which the earth makes one revolution on its axis. Long v. City of Wichita Falls, 142 Tex. 202, 176 S.W.2d 936, 938, 939.

3. The space of time which elapses between two successive midnights. 2 Bl.Comm. 141; State v. Michel, 52 La.Ann. 936, 27 So. 565, 49 L.R.A. 218; Stevenson v. Donnelly, 221 Mass. 161, 108 N.E. 926, 927, Ann.Cas.1917E, 932; Long v. City of Wichita Falls, 142 Tex. 202, 176 S.W.2d 936, 938, 939.

4. The whole or any part of period of 24 hours from midnight to midnight. Talbott v. Caudill, 248 Ky. 146, 58 S.W.2d 385.

5. That portion of time during which the sun is above the horizon, and, in addition, that part of the morning and evening during which there is sufficient light for the features of a man to be reasonably discerned. 3 Inst. 63; Nicholls v. State, 68 Wis. 416, 32 N.W. 543, 60 Am.Rep. 870; State v. McKnight, 111 N.C. 690, 16 S.E. 319; U. S. v. Martin, D.C.Mass., 33 F.2d 639, 640.

6. An artificial period of time, computed from one fixed point to another twenty-four hours later, without any reference to the prevalence of light or darkness. Fuller v. Schroeder, 20 Neb. 631, 31 N.W. 109.

7. The period of time, within the limits of a natural day, set apart either by law or by common usage for the transaction of particular business or the performance of labor; as in banking, in laws regulating the hours of labor, in contracts for so many "days' work," and the like, the word "day" may signify six, eight, ten, or any number of hours. Fay v. Brown, 96 Wis. 434, 71 N.W. 895; McCulsky v. Klosterman, 20 Or. 108, 25 P. 366, 10 L.R.A. 785.

8. In practice and pleading. A particular time assigned or given for the appearance of parties in court, the return of writs, etc.

When considered in computing time, it is an indivisible point of time, Williams v. Williams, 325 Mo. 963, 30 S.W.2d 69, 71; Fiedler v. Eckfeldt, 335 Ill. 11, 166 N.E. 504, 507; Greulich v. Monnin, 142 Ohio St. 113, 50 N.E.2d 310, 312; but that it is not divisible is a mere fiction, only observed for the purposes of justice and never adhered to when it would work mischief. Greulich v. Monnin, Ohio App., 45 N.E.2d 212, 217. Durstin v. Dodge, 138 Me. 12, 20 A.2d 671, 672.

Regardless of the duration of the "day," the law often disregards fractions, where priority is not concerned. Franklin v. State, 9 Okl.Cr. 178, 131 P. 183, 184; Harris County v. Hammond, Tex.Civ.App., 203 S.W. 451, 453; State ex rel. Jones v. Board of Deputy State Supervisors & Inspectors of Elections of Montgomery County, 93 Ohio St. 14, 112 N.E. 136, 137; First National Bank v. Burkhardt, 100 U.S. 686, 25 L. Ed. 766.

Astronomical Day

The period of twenty-four hours beginning and ending at noon.

Artificial Day

The time between the rising and setting of the sun; that is, day or daytime as distinguished from night.

Calendar Days

See Calendar.

Civil Day

The solar day, measured by the diurnal revolution of the earth, and denoting the interval of time which elapses between the successive transits of the sun over the same hour circle, so that the "civil day" commences and ends at midnight. Pedersen v. Eugster, D.C.La., 14 F. 422.

Clear Days

See Clear.

Common Day

In old English practice. An ordinary day in court. Cowell; Termes de la Ley.

Judicial Day

A day on which the court is actually in session. Heffner v. Heffner, 48 La.Ann. 1088, 20 So. 281.

Juridical Day

A day proper for the transaction of business in court; one on which the court may lawfully sit, excluding Sundays and some holidays.

Law Day

The day prescribed in a bond, mortgage, or defeasible deed for payment of the debt secured thereby, or, in default of payment, the forfeiture of the property mortgaged. But this does not now occur until foreclosure. Ward v. Lord, 100 Ga. 407, 28 S.E. 446; Kortright v. Cady, 21 N.Y. 345, 78 Am.Rep. 145.

Legal Day

A juridical day. See *supra*. And see Heffner v. Heffner, 48 La.Ann. 1088, 20 So. 281.

Natural Day

Properly the period of twenty-four hours from midnight to midnight. Co.Litt. 135; Fox v. Abel, 2 Conn. 541; People v. Hatch, 33 Ill. 137. Though sometimes taken to mean the daytime or time between sunrise and sunset. In re Ten Hour Law, 24 R.I. 603, 54 A. 602, 61 L.R.A. 612.

Non-judicial Day

One on which process cannot ordinarily issue or be served or returned and on which the courts do not ordinarily sit. Whitney v. Blackburn, 17 Or. 564, 21 P. 874, 11 Am.St.Rep. 857. More properly "non-juridical day."

Solar Day

A term sometimes used as meaning that portion of the day when the sun is above the horizon, but properly it is the time between two complete (apparent) revolutions of the sun, or between two consecutive positions of the sun over any given terrestrial meridian, and hence, according to the usual method of reckoning, from noon to noon at any given place.

DAY-BOOK. A tradesman's account book; a book in which all the occurrences of the day are set down. It is usually a book of original entries.

DAY CERTAIN. A fixed or appointed day; a specified particular day; a day in term. Regina v. Conyers, 8 Q.B. 991.

DAY FIXED FOR TRIAL. Has been held to mean return day of summons or any later day to which trial is adjourned and on which it is actually held. Okin v. Shafman, N.J,, 11 N.J.Misc. 462, 166 A. 730.

DAY IN COURT. The time appointed for one whose rights are called judicially in question, or liable to be affected by judicial action, to appear in court and be heard in his own behalf. This phrase, as generally used, means not so much the time appointed for a hearing as the opportunity to present one's claims or rights in a proper forensic hearing before a competent tribunal. See Ferry v. Car Wheel Co., 71 Vt. 457, 45 A. 1035, 76 Am.St.Rep. 782.

A litigant has his "day in court" when he has been duly cited to appear and has been afforded an opportunity to appear and to be heard. Cohen v. City of Houston, Tex.Civ.App., 185 S.W.2d 450, 452; In re Hampton's Estate, 55 Cal.App.2d 543, 131 P.2d 565, 573; State ex rel. Allstate Ins. Co. v. Bowen, 130 Ohio St. 347, 199 N.E. 355, 363.

DAY OF ATONEMENT. See Yom Kippur.

DAYERIA. A dairy. Cowell.

DAYLIGHT. That portion of time before sunrise, and after sunset, which is accounted part of the day, (as distinguished from *night,)* in defining the offense of burglary. 4 Bl.Comm. 224; Cro. Jac. 106.

DAY-RULE, or DAY-WRIT. In English law. A permission granted to a prisoner to go out of prison, for the purpose of transacting his business, as to hear a case in which he is concerned at the assizes, etc. Abolished by 5 & 6 Vict. c. 22, § 12.

DAYS IN BANK. (L. Lat. *dies in banco.)* In practice. Certain stated days in term appointed for the appearance of parties, the return of process, etc., originally peculiar to the court of common pleas, or bench, (bank,) as it was anciently called. 3 Bl.Comm. 277.

By the common law, the defendant is allowed three full days in which to make his appearance in court, exclusive of the day of appearance or return-day named in the writ; 3 Bl.Comm. 278. Upon his appearance, time is usually granted him for pleading; and this is called giving him day, or, as it is more familiarly expressed, a continuance. 3 Bl.Comm. 316. When the suit is ended by discontinuance or by judgment for the defendant, he is discharged from further attendance, and is said to go thereof *sine die,* without day. See Continuance.

DAYS OF GRACE. A number of days allowed, as a matter of favor or *grace,* to a person who has to perform some act, or make some payment, after the time originally limited for the purpose has elapsed. In old practice. Three days allowed to persons summoned in the English courts, beyond the day named in the writ, to make their appearance; the last day being called the *"quarto die post."* 3 Bl.Comm. 278. In mercantile law. A certain number of days (generally three) allowed to the maker or acceptor of a bill, draft, or note, in which to make payment, after the expiration of the time expressed in the paper itself. Originally these days were granted only as a matter of *grace* or favor, but the allowance of them became an established custom of merchants, and was sanctioned by the courts, (and in some cases prescribed by statute,) so that they are now demandable as of right. Bell v. Bank, 115 U.S. 373, 6 S.Ct. 105, 29 L.Ed. 409; Renner v. Bank, 9 Wheat. 581, 6 L.Ed. 166.

DAYSMAN. An arbitrator, umpire, or elected judge. Cowell.

DAYTIME. The time during which there is the light of day, as distinguished from night or nighttime. That portion of the twenty-four hours during which a man's person and countenance are distinguishable. Trull v. Wilson, 9 Mass. 154; Rex v. Tandy, 1 Car. & P. 297; Linnen v. Banfield, 114 Mich. 93, 72 N.W. 1; U. S. v. Syrek, D.C.Mass., 290 F. 820, 821; Deese v. City of Lodi, 21 Cal.App. 2d 631, 69 P.2d 1005, 1008.

DAYWERE. In old English law. A term applied to land, and signifying as much arable ground as could be plowed up in one day's work. Cowell.

DE. A Latin preposition, signifying of; by; from; out of; affecting; concerning; respecting.

DE ACQUIRENDO RERUM DOMINIO. Of (about) acquiring the ownership of things. Dig. 41, 1; Bract. lib. 2, fol. 8b.

DE ADMENSURATIONE. Of admeasurement. Thus, *de admensuratione dotis* was a writ for the

admeasurement of dower, and *de admensuratione pasturce* was a writ for the admeasurement of pasture.

DE ADVISAMENTO CONSILII NOSTRI. L. Lat. With or by the advice of our council. A phrase used in the old writs of summons to parliament. Crabb, Eng.Law, 240.

DE ZEQUITATE. In equity. *De jure stricto, nihil possum vendicare, de cequitate tamen, nullo modo hoc obtinet;* in strict law. I can claim nothing, but in equity this by no means obtains. Fleta, lib. 3, c. 2, § 10.

DE IESTIMATO. In Roman law. One of the innominate contracts, and, in effect, a sale of land or goods at a price fixed, *(cestimato,)* and guarantied by some third party, who undertook to find a purchaser.

DE ZETATE PROBANDA. For proving age. A writ which formerly lay to summon a jury in order to determine the age of the heir of a tenant *in capite* who claimed his estate as being of full age. Fitzh.Nat.Brev. 257; Reg.Orig. 294.

DE ALEATORIBUS. About gamesters. The name of a title in the Pandects. Dig. 11, 5.

DE ALLOCATIONE FACIENDA, *Breve.* Writ for making an allowance. An old writ directed to the lord treasurer and barons of the exchequer, for allowing certain officers (as collectors of customs) in their accounts certain payments made by them. Reg.Orig. 192.

DE ALTO ET BASSO. Of high and low. A phrase anciently used to denote the absolute submission of all differences to arbitration. Cowell.

DE AMBITU. Lat. Concerning bribery. A. phrase descriptive of the subject-matter of several of the Roman laws; as the *Lex Aufidia,* the *Lex Pompeia,* the *Lex Tullia,* and others. See Ambitus.

DE AMPLIORI GRATIA. Of more abundant or especial grace. Townsh.Pl. 18.

DE ANNO BISSEXTILI. Of the bissextile or leap year. The title of a statute passed in the twenty-first year of Henry III., which in fact, however, is nothing more than a sort of writ or direction to the justices of the bench, instructing them how the extraordinary day in the leap year was to be reckoned in cases where persons had a day to appear at the distance of a year, as on the essoin *de malo lecti,* and the like. It was thereby directed that the additional day should, together with that which went before, be reckoned only as one, and so, of course, within the preceding year. 1 Reeve, Eng.Law, 266.

DE ANNUA PENSIONE, *Breve.* Writ of annual. pension. An ancient writ by which the king, having a yearly pension due him out of an abbey or priory for any of his chaplains, demanded the same of the abbot or prior, for the person named in the writ. Reg.Orig. 265b, 307; Fitzh.Nat.Brev. 231 G.

DE ANNUO REDITU. For a yearly rent. A. writ to recover an annuity, no matter how payable, in goods or money. 2 Reeve, Eng.Law, 258.

DE APOSTATA CAPIENDO, *Breve.* Writ for taking an apostate. A writ which anciently lay against one who, having entered and professed some order of religion, left it and wandered up and down the country, contrary to the rules of his order, commanding the sheriff to apprehend him and deliver him again to his abbot or prior. Reg.Orig. *71b,* 267; Fitzh.Nat.Brev. 233, 234.

DE ARBITRATIONE FACTA. (Lat. Of arbitration had.) A writ formerly used when an action was brought for a cause which had been settled by arbitration. Wats.Arb. 256.

DE ARRESTANDIS BONIS NE DISSIPENTUR. And old writ which lay to seize goods in the hands of a party during the pendency of a suit, to prevent their being made away with. Reg.Orig. 126b.

DE ARRESTANDO IPSUM QUI PECUNIAM RECEPIT. A writ which lay for the arrest of one who had taken the king's money to serve in the war, and hid himself to escape going. Reg.Orig. 24b.

DE ARTE ET PARTE. Of art and part. A phrase in old Scotch law. See Art and Part.

DE ASPORTATIS RELIGIOSORUM. Concerning the property of religious persons carried away. The title of the statute 35 Edward I. passed to check the abuses of clerical possessions, one of which was the waste they suffered by being drained into foreign countries. 2 Reeve, Eng.Law, 157; 2 Inst. 580.

DE ASSISA PROROGANDA. (Lat. For proroguing assise.) A writ to put off an assise, issuing to the justices, where one of the parties is engaged in the service of the king.

DE ATTORNATO RECIPIENDO. A writ which lay to the judges of a court, requiring them to receive and admit an attorney for a party. Reg. Orig. 172; Fitzh.Nat.Brev. 156.

DE AUDIENDO ET TERMINANDO. For hearing and determining; to hear and determine. The name of a writ, or rather commission granted to certain justices to hear and determine cases of heinous misdemeanor, trespass, riotous breach of the peace, etc. Reg.Orig. 123, *et seq.;* Fitzh.Nat. Brev. 110 B. See Oyer and Terminer.

DE AVERIIS CAPTIS IN WITIIERNAMIUM. Writ for taking cattle in withernam. A writ which lay where the sheriff returned to a *pluries* writ of replevin that the cattle or goods, etc., were eloined, etc.; by which he was commanded to take the cattle of the defendant in withernam, (or reprisal,) and detain them until he could replevy the other cattle. Reg.Orig. 82; Fitzh. Nat.Brev. 73, E. F. See Withernam.

DE AVERIIS REPLEGIANDIS. A writ to replevy beasts. 3 Bl.Comm. 149.

DE AVERIIS RETORNANDIS. For returning the cattle. A term applied to pledges given in the old action of replevin. 2 Reeve, Eng.Law, 177.

DE BANCO. Of the bench. A term formerly applied in England to the justices of the court of common pleas, or "bench," as it was originally styled.

DE BENE ESSE. Conditionally; provisionally; in anticipation of future need. A phrase applied to proceedings which are taken *ex parte* or provisionally, and are allowed to stand as *well done* for the present, but which may be subject to future exception or challenge, and must then stand or fall according to their intrinsic merit and regularity.

Thus, "in certain cases, the courts will allow evidence to be taken out of the regular course, in order to prevent the evidence being lost by the death or the absence of the witness. This is called 'taking evidence *de bene esse,*' and is looked upon as a temporary and conditional examination, to be used only in case the witness cannot afterwards be examined in the suit in the regular way." Hunt, Eq. 75; Haynes, Eq. 183; Mitt. Eq. Pl. 52, 149; Willis v. Bank of Hardinsburg & Trust Co., 160 Ky. 808, 170 S.W. 188, 189.

*Examination de bene esse*

A provisional examination of a witness ; an examination of a witness whose testimony is important and might otherwise be lost, held out of court and before the trial, with the proviso that the deposition so taken may be used on the trial in case the witness is unable to attend in person at that time or cannot be produced.

DE BIEN ET DE MAL. L. Fr. For good and evil. A phrase by which a party accused of a crime anciently put himself upon a jury, indicating his entire submission to their verdict; also the name of the special writ of jail delivery formerly in use in England, which issued for each particular prisoner, of course. It was superseded by the general commission of jail delivery.

DE BIENS LE MORT. L. Fr. Of the goods of the deceased. Dyer, 32.

DE BIGAMIS. Concerning men twice married. The title of the statute 4 Edw. I. St. 3; so called from the initial words of the fifth chapter. 2 Inst. 272; 2 Reeve, Eng.Law, 142.

DE BONE MEMORIE. L. Fr. Of good memory; of sound mind. 2 Inst. 510.

DE BONIS ASPORTATIS. For goods taken away; for taking away goods. The action of trespass for taking personal property is technically called "trespass *de bonis asportatis.*" 1 Tidd, Pr. 5.

DE BONIS NON. An abbreviation of *De bonis non administratis, (q. v.).* 1 Strange, 34.

DE BONIS NON ADMINISTRATIS. Of the goods not administered. When an administrator is appointed to succeed another, who has left the estate partially unsettled, he is said to be granted "administration *de bonis non;*" that *is,* of the goods not already administered. McNair v. Howle, 123 S.C. 252, 116 S.E. 279, 285.

DE BONIS NON AMOVENDIS. Writ for not removing goods. A writ anciently directed to the sheriffs of London, commanding them, in cases where a writ of error was brought by a defendant against whom a judgment was recovered, to see that his *goods* and chattels were safely kept *without being removed,* while the error remained undetermined, so that execution might be had of them, etc. Reg.Orig. 131b; Termes de la Ley.

DE BONIS PROPRIIS. Of his own goods. The technical name of a judgment against an administrator or executor to be satisfied from his own property, and not from the estate of the deceased, as in cases where he has been guilty of a *devastavit* or of a false plea of *plene administravit.*

DE BONIS TESTATORIS, or INTESTATI. Of the goods of the testator, or intestate. A term applied to a judgment awarding execution against the property of a testator or intestate, as distinguished from the individual property of his executor or administrator. 2 Archb.Pr.K.B. 148, 149.

DE BONIS TESTATORIS AC SL (Lat. From the goods of the testator, *if he has* any, and, if *not, from those of the executor.)* A judgment rendered where an executor falsely pleads any matter as a release, or, generally, in any case where he is to be charged in case his testator's estate is insufficient. 1 Williams' Saund. 336b; Bac. Abr. "Executor," B, 3; 2 Archb.Pr.K.B. 148.

DE BONO ET MALO. See De Bien et De Mal.

DE BONO GESTU. For good behavior; for good abearance.

DE CZETERO. Henceforth.

DE CALCETO REPARANDO. Writ for repairing a causeway. An old writ by which the sheriff was commanded to distrain the inhabitants of a place to repair and maintain a causeway, etc. Reg. Orig. 154.

DE CAPITALIBUS DOMINIS FEODI. Of the chief lords of the fee.

DE CAPITE MINUTIS. Of those who have lost their *status,* or civil condition. Dig. 4, 5. The name of a title in the Pandects. See Capitis Deminutio.

DE CARTIS REDDENDIS. (For restoring charters.) A writ to secure the delivery of charters or deeds; a writ of detinue. Reg. Orig. 159b_

DE CATALLIS REDDENDIS. (For restoring chattels.) A writ to secure the return specifically of chattels detained from the owner. Cowell.

DE CAUTIONE ADMITTENDA. Writ to take caution or security. A writ which anciently lay against a bishop who held an excommunicated person in prison for his contempt, notwithstand-

ing he had offered sufficient security *(idoneam cautionem)* to obey the commands of the church; commanding him to take such security and release the prisoner. Reg. Orig. 66; Fitzh. Nat. Brev. 63, C.

DE CERTIFICANDO. A writ requiring a thing to be certified. A kind of *certiorari.* Reg. Orig. 151, 152.

DE CERTIORANDO. A writ for certifying. A. writ directed to the sheriff, requiring him to certify to a particular fact. Reg. Orig. 24.

DE CHAMPERTIA. Writ of champerty. A writ directed to the justices of the bench, commanding the enforcement of the statute of *champertors.* Reg. Orig. 183; Fitzh. Nat. Brev. 172.

DE CHAR ET DE SANK. L. Fr. Of flesh and blood. *A ffaire rechat de char et de sank.* Words used in claiming a person to be a villein, in the time of Edward II. Y. B. P. 1 Edw. II. p. 4.

DE CHIMINO. A writ for the enforcement of a right of way. Reg. Orig. 155.

DE CIBARIIS UTENDIS. Of victuals to be used. The title of a sumptuary statute passed 10 Edw. III. St. 3, to restrain the expense of entertainments. Barring. Ob. St. 240.

DE CLAMEA ADMITTENDA IN ITINERE PER ATTORNATUM. See Clamea Admittenda, etc.

DE CLARO DIE. By daylight. Fleta, lib. 2, c. 76, § 8.

DE CLAUSO FRACTO. Of close broken; of breach of close. See Clausum Fregit.

DE CLERICO ADMITTENDO. See Admittendo Clerico.

DE CLERICO CAPTO PER STATUTUM MERCATORIUM DELIBERANDO. Writ for delivering a clerk arrested on a statute merchant. A writ for the delivery of a clerk out of prison, who had been taken and imprisoned upon the breach of a statute merchant. Reg. Orig. 147b.

DE CLERICO CONVICTO DELIBERANDO. See Clerico Convicto, etc.

DE CLERICO INFRA SACROS ORDINES CONSTITUTO NON ELIGENDO IN OFFICIUM. See Clerico Infra Sacros, etc.

DE CLERO. Concerning the clergy. The title of the statute 25 Edw. III. St. 3; containing a variety of provisions on the subject of presentations, indictments of spiritual persons, and the like. 2 Reeve, Eng. Law, 378.

DE COMBUSTIONE DOMORUM. Of house burning. One of the kinds of appeal formerly in use in England. Bract. fol. 14619; 2 Reeve, Eng. Law, 38.

DE COMMUNI DIVIDUNDO. For dividing a thing held in common. The name of an action given by the civil law. Mackeld. Rom. Law, § 499.

DE COMON DROIT. L. Fr. Of common right; that is, by the common law. Co. Litt. 142a.

DE COMPUTO. Writ of account. A writ commanding a defendant to render a reasonable account to the plaintiff, or show cause to the contrary. Reg. Orig. 135-138; Fitzh. Nat. Brev. 117, E. The foundation of the modern action of account.

DE CONCILIO CURVE. By the advice (or direction) of the court.

DE CONFLICTU LEGUM. Concerning the conflict of laws. The title of several works written on that subject. 2 Kent, Comm. 455.

DE CONJUNCTIM FEOFFATIS. Concerning persons jointly enfeoffed, or seised. The title of the statute 34 Edw. I., which was passed to prevent the delay occasioned by tenants in novel disseisin, and other writs, pleading that some one else was seised jointly with them. 2 Reeve, Eng. Law, 243.

DE CONSANGUINEO, and DE CONSANGUINITATE. Writs of cosinage, *(q. v.).*

DE CONSILIO. In old criminal law. Of counsel; concerning counsel or advice to commit a crime. Fleta, lib. 1, c. 31, § 8.

DE CONSILIO CURVE. By the advice or direction of the court. Bract. fol. 345b.

DE CONTINUANDO ASSISAM. Writ to continue an assise. Reg. Orig. 217b.

DE CONTUMACE CAPIENDO. Writ for taking a contumacious person. A writ which issues out of the English court of chancery, in cases where a person has been pronounced by an ecclesiastical court to be contumacious, and in contempt. Shelf. Mar. & Div. 494-496, and notes. It is a commitment for contempt. Id.

DE COPIA LIBELLI DELIBERANDA. Writ for delivering the copy of a libel. An ancient writ directed to the judge of a spiritual court, commanding him to *deliver* to a defendant a *copy* of the libel filed against him in such court. Reg. Orig. 58. The writ in the register is directed to the Dean of the Arches, and his commissary. Id.

DE CORONATORE ELIGENDO. Writ for electing a coroner. A writ issued to the sheriff in England, commanding him to proceed to the election of a coroner, which is done in full county court, the freeholders being the electors. Sewell, Sheriffs, 372.

DE CORONATORE EXONERANDO. Writ for discharging or removing a coroner. A writ by which a coroner in England may be removed from office for some cause therein assigned. Fitzh. Nat. Brev. 163, 164; 1 Bl.Comm. 348.

DE CORPORE COMITATUS. From the body of the county at large, as distinguished from a par• ticular neighborhood, *(de vicineto.)* 3 Bl.Comm. 360. Used with reference to the composition of a jury. State v. Kemp, 34 Minn. 61, 24 N.W. 349.

DE CORRODIO HABENDO. Writ for having a corody. A writ to exact a corody from a religious house. Reg. Orig. 264, Fitzh. Nat. Brev. 230. See Corody.

DE CUJUS. Lat. From whom. A term used to designate the person by, through, from, or under whom another claims. Brant v. New Orleans, 41 La.Ann. 1098, 6 So. 793.

DE CURIA CLAUDENDA. An obsolete writ, to require a defendant to fence in his court or land about his house, where it was left open to the injury of his neighbor's freehold. 1 Crabb, Real Prop. 314; Rust v. Low, 6 Mass. 90.

DE CURSU. Of course. The usual, necessary, and formal proceedings in an action are said to be *de cursu;* as distinguished from *summary* proceedings, or such as are incidental and may be taken on summons or motion. Writs *de cursu* are such as are issued of course, as distinguished from prerogative writs.

DE CUSTODE ADMITTENDO. Writ for admitting a guardian. Reg. Orig. 93b, 198.

DE CUSTODE AMOVENDO. Writ for removing a guardian. Reg. Orig. 198.

DE CUSTODIA TERRIE ET HZEREDIS, *Breve.* L. Lat. Writ of ward, or writ of right of ward. A writ which lay for a guardian in knight's service or in socage, to recover the possession and custody of the infant, or the *wardship of the land and heir.* Reg. Orig. 161b; Fitzh. Nat. Brev. 139, B; 3 Bl.Comm. 141.

DE DEBITO. A writ of debt. Reg. Orig. 139.

DE DEBITORE IN PARTES SECANDO. In Roman law. "Of cutting a debtor in pieces." This was the name of a law contained in the Twelve Tables, the meaning of which has occasioned much controversy. Some commentators have concluded that it was literally the privilege of the creditors of an insolvent debtor (all other means failing) to cut his body into pieces and distribute it among them. Others contend that the language of this law must be taken figuratively, denoting a cutting up and apportionment of the debtor's *estate.*

The latter view has been adopted by Montesquieu, Bynkershoek, Heineccius, and Taylor. (Esprit des Lois, liv. 29, c. 2; Bynk.Obs.Jur.Rom. 1. 1, c. 1; Heinecc.Ant.Rom. lib. 3, tit. 30, § 4; Tayl.Comm. in Leg.Decemv.) The literal meaning, on the other hand, is advocated by Aulus Gellius and other writers of antiquity, and receives support from an expression *(semoto omni cruciatu)* in the Roman code itself. (Aul.Gel.Noctes Attica, lib. 20, c. 1; Code, 7, 7, 8.) This is also the opinion of Gibbon, Gravina, Pothier, Hugo, and Niebuhr. (3 Gib.Rom.Emp., Am.Ed., p. 183; Gra$^{v}$. de Jur.Nat.Gent. et XII. Tab. § 72; Poth.Introd.Pand.; Hugo, Hist. du Droit Rom. tom. p. 233, § 149; 2 Nieb. Hist.Rom. p. 597; 1 Kent, Comm. 523, note.) Burrill.

DE DECEPTIONE. A writ of deceit which lay against one who acted in the name of another whereby the latter was damnified and deceived. Reg. Orig. 112.

DE DEONERANDA PRO RATA PORTIONIS. A writ that lay where one was distrained for 'rent that ought to be paid by others proportionably with him. Fitzh. Nat. Brev. 234; Termes de la Ley.

DE DIE IN DIEM. From day to day. Bract. fol. 205b.

DE DIVERSIS REGULIS JURIS ANTIQUI. Of divers rules of the ancient law. A celebrated title of the Digests, and the last in that collection. It consists of two hundred and eleven rules or maxims. Dig. 50, 17.

DE BOLO MALO. Of or founded upon fraud. Dig. 4, 3. See Actio de Dolo Malo.

DE DOMO REPARANDA. A writ *which* lay for one tenant in common to compel his cotenant to contribute towards the repair of the common property.

DE DONIS. Concerning gifts, (or more fully, *de donis conditionalibus,* concerning conditional gifts.) The name of a celebrated English statute, passed in the thirteenth year of Edw. I., and constituting the first chapter of the statute of Westm. 2, by virtue of which estates in fee-simple conditional (formerly known as *"dona conditionalia")* were converted into estates in fee-tail and rendered inalienable, thereby strengthening the power of the nobles. See 2 Bl.Comm. 112.

DE DOTE ASSIGNANDA. Writ for assigning dower. A writ which lay for the widow of a tenant *in capite,* commanding the king's escheater to cause her dower to be assigned to her. Reg. Orig. 297; Fitzh. Nat. Brev. 263, C.

DE DOTE UNDE NIHIL HABET. A writ of dower which lay for a widow where no part of her dower had been assigned to her. It is not much used; but a form closely resembling it is sometimes used in the United States. 4 Kent, Comm. 63; Stearns, Real Act. 302; 1 Washb. Real Prop. 230.

DE EJECTIONE CUSTODI)E. A writ which lay for a guardian who had been forcibly ejected from his wardship. Reg. Orig. 162.

DE EJECTIONE FIRM2E. A writ which lay at the suit of the tenant for years against the lessor, reversioner, remainderman, or stranger who had himself deprived the tenant of the occupation of the land during his term. 3 Bl.Comm. 199. By a gradual extension of the scope of this form of action its object was made to include not only damages for the unlawful detainer, but also the possession for the remainder of the term, and eventually the possession of land generally. And, as it turned on the right of possession, this involved a determination of the right of property, or the title, and thus arose the modern action of ejectment.

DE ESC2ETA. Writ of escheat. A writ which a lord had, where his tenant died without heir, to recover the land. Reg. Orig. 164b; Fitzh. Nat. Brev. 143, 144, E.

DE ESCAMBIO MONET/E. A writ of exchange of money. An ancient writ to authorize a merchant to make a bill of exchange, *(literas cambitorias facere.)* Reg. Orig. 194.

DE ESSE IN PEREGRINATIONE. Of being on a journey. A species of essoin. 1 Reeve, Eng. Law, 119.

DE ESSENDO QUIETUM DE TOLONIO. A writ which lay for those who were by privilege free from the payment of toll, on their being molested therein. Fitzh. Nat. Brev. 226; Reg. Orig. 258b.

DE ESSONIO DE MALO LECTI. A writ which issued upon an essoin of *malum lecti* being cast, to examine whether the party was in fact sick or not. Reg. Orig. 8b.

DE ESTOVERIIS HABENDIS. Writ for having estovers. A writ which lay for a wife divorced a *mensa et thoro,* to recover her alimony or estovers. 1 Bl.Comm. 441; 1 Lev. 6.

DE ESTREPAMENTO. A writ which lay to prevent or stay waste by a tenant, during the pendency of a suit against him to recover the lands. Reg. Orig. 76b. Fitzh. Nat. Brev. 60.

DE EU ET TRENE. L. Fr. Of water and whip of three cords. A term applied to a neife, that is, a bond woman or female villein, as employed in servile work, and subject to corporal punishment. Co. Litt. 25b.

DE EVE ET DE TREVE. A law French phrase, equivalent to the Latin *de avo et de tritavo,* descriptive of the ancestral rights of lords in their villeins. Literally, "from grandfather and from great-grandfather's great-grandfather." It occurs in the Year Books.

DE EXCOMMUNICATO CAPIENDO. A writ commanding the sheriff to arrest one who was excommunicated, and imprison him till he should become reconciled to the church. 3 Bl.Comm. 102. Smith v. Nelson, 18 Vt. 511.

DE EXCOMMUNICATO DELIBERANDO. A writ to deliver an excommunicated person, who has made satisfaction to the church, from prison. 3 Bl.Comm. 102.

DE EXCOMMUNICATO RECAPIENDO. Writ for retaking an excommunicated person, where he had been liberated from prison without making satisfaction to the church, or giving security for that purpose. Reg. Orig. 67.

DE EXCUSATIONIBUS. "Concerning excuses." This is the title of book 27 of the Pandects, (in the *Corpus Juris Civilis.)* It treats of the circumstances which excuse one from filling the office of tutor or curator. The bulk of the extracts are from Modestinus.

DE EXECUTIONE FACIENDA IN WITHERNAMIUM. Writ for making execution in withernam. Reg. Orig. 82b. A species of *capias in withernam.*

DE EXECUTIONE JUDICII. A writ directed to a sheriff or bailiff, commanding him to do execution upon a judgment. Reg. Orig. 18; Fitzh. Nat. Brev. 20.

DE EXEMPLIFICATIONE. Writ of exemplification. A writ granted for the exemplification of an original. Reg. Orig. 290b.

DE EXONERATIONE SECTIE. Writ for exoneration of suit. A writ that lay for the king's ward to be discharged of all suit to the county court, hundred, leet, or court-baron, during the time of his wardship. Fitzh. Nat. Brev. 158; New Nat. Brev. 352.

DE EXPENSIS CIVIUM ET BURGENSIUM. An obsolete writ addressed to the sheriff to levy the expenses of every citizen and burgess of parliament. 4 Inst. 46.

DE EXpENSIS MILITUM LEVANDIS. Writ for levying the expenses of knights. A writ directed to the sheriff for levying the allowance for knights of the shire in parliament. Reg. Orig. 191b, 192.

DE FACTO. In fact, in deed, actually. This phrase is used to characterize an officer, a government, a past action, or a state of affairs which must be accepted for all practical purposes, but is illegal or illegitimate. In this sense it is the contrary of *de jure,* which means rightful, legitimate, just, or constitutional. Thus, an officer, king, or government *de facto* is one who is in actual possession of the office or supreme power, but by usurpation, or without lawful title; while an officer, king, or governor *de jure* is one who has just claim and rightful title to the office or power, but has never had plenary possession of it, or is not in actual possession. 4 Bl.Comm. 77, 78. MacLeod v. United States, 229 U.S. 416, 33 S.Ct. 955, 57 L.Ed. 1260; Wheatley v. Consolidated Lumber Co., 167 Cal. 441, 139 P. 1057, 1059. So a wife *de facto* is one whose marriage is voidable by decree, as distinguished from a wife *de jure,* or lawful wife. 4 Kent, Comm. 36. But the term is also frequently used independently of any distinction from *de jure;* thus a blockade *de facto* is a blockade which is actually maintained, as distinguished from a mere paper blockade. 1 Kent, 44. As to *de facto* "Corporation," "Court," "Domicile," "Government," and "Officer," see those titles.

In old English law it means respecting or concerning the principal act of a murder, which was technically denominated *factum.* See Fleta, lib. 1, c. 27, § 18.

DE FACTO CONTRACT. One which has purported to pass the property from the owner to another. Bank v. Logan, 74 N.Y. 575; Edmunds v.. Transp. Co., 135 Mass. 283.

DE FAIRE ECHELLE. In French law. A clause commonly inserted in policies of marine insurance, equivalent to a license to touch and trade at intermediate ports. American Ins. Co. v. Griswold, 14 Wend., N.Y. 491.

DE FALSO JUDICIO. Writ of false judgment. Reg.Orig. 15; Fitzh.Nat.Brev. 18. See False Judgment.

DE FALSO MONETA. Of false money. The title of the statute 27 Edw. I. ordaining that persons importing certain coins, called "pollards," and "crokards," should forfeit their lives and goods, and everything they could forfeit. 2 Reeve, Eng.Law, 228, 229.

DE FIDE ET OFFICIO JUDICIS NON RECIPITUR QUIESTIO, SED DE SCIENTIA, SIVE SIT ERROR JURIS, SIVE FACTI. Concerning the fidelity and official conduct of a judge, no question is Lwill, be] entertained; but [only] concerning his knowledge, whether the error [committed] be of law or of fact. Bac.Max. 68, reg. 17. The *bona fides* and honesty of purpose of a judge cannot be questioned, but his decision may be impugned for error either of law or fact. Broom, Max, 85. The law doth so much respect the certainty of judgments, and the credit and authority of judges, that it will not permit any error to be assigned which impeacheth them in their *trust* and *office,* and in willful abuse of the same; but only in ignorance and mistaking either of the law, or of the case and matter of fact. Bac.Max. ubi supra. Thus, it cannot be assigned for error that a judge did that which he ought not to do; as that he entered a verdict for the plaintiff, where the jury gave it for the defendant. Fitzh.Nat.Brev. 20, 21; Bac.Max. ubi supra; Hardr. 127, arg.

DE FIDE! L1ESIONE. Of breach of faith or fidelity. 4 Reeve, Eng.Law, 99.

DE FINE FORCE. L. Fr. Of necessity; of pure necessity. See Fine Force.

DE FINE NON CAPIENDO PRO PULCHRE PLACITANDO. A writ prohibiting the taking of fines for beau pleader. Reg.Orig. 179.

DE FINE PRO REDISSEISINA CAPIENDO. A writ which lay for the release of one imprisoned for a re-disseisin, on payment of a reasonable fine. Reg.Orig. 222b.

DE FINIBUS LEVATIS. Concerning fines levied. The title of the statute 27 Edw. I. requiring fines thereafter to be levied, to be read openly and solemnly in court. 2 Inst. 521.

DE FORISFACTURA MARITAGII. Writ of forfeiture of marriage. Reg.Orig. 163, 164.

DE FRANGENTIBUS PRISONAM. Concerning those that break prison. The title of the statute 1 Edw. II. ordaining that none from thenceforth who broke prison should have judgment of life or limb for breaking prison only, unless the cause for which he was taken and imprisoned required such a judgment if he was lawfully convicted thereof. 2 Reeve, Eng.Law, 290; 2 Inst. 589.

DE FlURTO. Of theft. One of the kinds of criminal appeal formerly in use in England. 2 Reeve, Eng.Law, 40.

DE GESTU ET FAMA. Of behavior and reputation. An old writ which lay in cases where a person's conduct and reputation were impeached.

DE GRATIA. Of grace or favor, by favor. *De speciali gratia,* of special grace or favor.

DE GRATIA SPECIAL! CERTA SCIENTIA ET MERO MOTU, TALIS CLAUSULA NON VALET IN HIS IN QUIBUS PRIESUMITUR PRINCIPEM ESSE IGNORANTEM. 1 Coke, 53. The clause "of our special grace, certain knowledge, and mere motion," is of no avail in those things in which it is presumed that the prince was ignorant.

DE GROSSIS ARBORIBUS DECEIVE NON DABUNTUR SED DE SYLVIA GEDUA DECIMiE DABUNTUR. 2 Rolle, 123. Of whole trees, tithes are not given; but of wood cut to be used, tithes are given.

DE HZEREDE DELIBERANDO ILLI QUI HABET CUSTODIAM TERRIE. Writ for delivering an heir to him who has wardship of the land. A writ directed to the sheriff, to require one that had the body of him that was ward to another to deliver him to the person whose ward he was by reason of his land. Reg.Orig. 161.

DE HIEREDE RAPTO ET ABDUCTO. Writ concerning an heir ravished and carried away. A writ which anciently lay for a lord who, having by right the wardship of his tenant under age could not obtain his body, the same being carried away by another person. Reg.Orig. 163; Old Nat.Brev. 93.

DE HIERETICO COMBURENDO. (Lat. For burning a heretic.) A writ which formerly issued from the secular courts for the execution, by burning, of a heretic, who had been convicted in the ecclesiastical courts of heresy, had abjured, and had relapsed into heresy. It is said to be very ancient. Fitzh.Nat.Brev. 269; 4 Bl.Comm. 46. See Ha retico Comburendo.

DE HOMAGIO RESPECTUANDO. A writ for respiting or postponing homage. Fitzh.Nat.Brev. 269, A.

DE HOMINE CAPTO IN WITHERNAM. (Lat. For taking a man in withernam.) A writ to take a man who had carried away a bondman or bondwoman into another country beyond the reach of a writ of replevin.

DE HOMINE REPLEGIANDO. (Lat. For replevying a man.) A writ which lies to replevy a man out of prison, or out of the custody of a private person, upon giving security to the sheriff that the man shall be forthcoming to answer any charge against him. Fitzh.Nat.Brev. 66; 3 Bl. Comm. 129. This writ has been superseded almost wholly, in modern practice, by that of *habeas corpus;* but it is still used, in some of the states, in an amended and altered form. See 1 Kent, Comm. 404n; 34 Me. 136.

DE IDENTITATE NOMINIS. A writ which lay for one arrested in a personal action and corn-

mitted to prison under a mistake as to his identity, the proper defendant bearing the same name. Reg.Orig. 194.

DE IDIOTA INQUIRENDO. An old common-law writ, long obsolete, to inquire whether a man be an idiot or not. 2 Steph.Comm. 509.

DE HS QUI PONENDI SUNT IN ASSISIS. Of those who are to be put on assises. The title of a statute passed 21 Edw. I. defining the qualifications of jurors. Crabb, Eng.Law, 167, 189; 2 Reeve, Eng.Law, 184.

DE INCREMENTO. Of increase; in addition. Costs *de incremento,* or costs of increase, are the costs adjudged by the court in civil actions, *in addition* to the damages and nominal costs found by the jury. Gilb.Com.Pl. 260.

DE INFIRMITATE. Of infirmity. The principal essoin in the time of Glanville; afterwards called *"de* ma/4f)." 1 Reeve, Eng.Law, 115. See De Malo; Essoin.

DE INGRESSU. A writ of entry. Reg.Orig. 227b, et seq.

DE INJURIA. Of [his own] wrong. In the technical language of pleading, a replication *de injuria* is one that may be made in an action of tort where the defendant has admitted the acts complained of, but alleges, in his plea, certain new matter by way of justification or excuse; by this replication the plaintiff avers that the defendant committed the grievances in question "of his own wrong, and without any such cause," or motive or excuse, as that alleged in the plea, *(de injuria sua propria absque tali causa;)* or, admitting part of the matter pleaded, "without the rest of the cause" alleged, *(absque residuo causce.)* In form it is a species of traverse, and it is frequently used when the pleading of the defendant, in answer to which it is directed, consists merely of matter of excuse of the alleged trespass, grievance, breach of contract, or other cause of action. Its comprehensive character in putting in issue all the material facts of the defendant's plea has also obtained for it the title of the general replication. Holthouse.

DE INOFFICIOSO TESTAMENTO. Concerning an inofficious or undutiful will. A title of the civil law. Inst. 2, 18.

DE INTEGRO. Anew; a second time. As it was before.

DE INTRUSIONE. A writ of intrusion; where a stranger entered after the death of the tenant, to the injury of the reversioner. Reg.Orig. 233b.

DE JACTURA EVITANDA. For avoiding a loss. A phrase applied to a defendant, as *de lucro captando* is to a plaintiff. Jones v. Sevier, 1 Litt., Ky., 51, 13 Am.Dec. 218.

DE JUDAISMO, STATUTUM. The name of a statute passed in the reign of Edward I. which enacted severe and arbitrary penalties against the Jews.

DE JUDICATO SOLVENDO. For payment of the amount adjudged. A term applied in the Scotch law to bail to the action, or special bail.

DE JUDICIIS. Of judicial proceedings. The title of the second part of the Digests or Pandects, including the fifth, sixth, seventh, eighth, ninth, tenth, and eleventh books. See Dig. Procem. § 3.

DE JUDICIO SISTI. For appearing in court. A term applied in the Scotch and admiralty law, to bail for a defendant's appearance.

DE JURE. Of right; legitimate; lawful; by right and just title. In this sense it is the contrary of *de facto,* (which see.) It may also be contrasted with *de gratia,* in which case it means "as a matter of right," as *de gratia* means "by grace or favor." Again it may be contrasted with *de cequitate;* here meaning "by law," as the latter means "by equity." See Government.

DE JURE DECIMARUM, ORIGINEM DUCENS DE JURE PATRONATUS, TUNC COGNITIO SPECTAT AT LEGEM CIVILEM, e., COMMUN. EM. Godb. 63. With regard to the right of tithes, deducing its origin from the right of the patron, then the cognizance of them belongs to the civil law; that is, the common law.

DE JURE JUDICES, DE FACTO JURATORES, RESPONDENT. The judges find the law, the jury the facts. See Co.Litt. 295; Broom, Max. 99.

DE LA PLUIS BEALE, or BELLE. L. Fr. Of the most fair. A term applied to a species of dower, which was assigned out of the fairest of the husband's tenements. Litt. § 48. See Dower de la Plus.Belle.

DE LATERE. From the side; on the side; collaterally; of collaterals. Cod. 5, 5, 6.

DE LEGATIS ET FIDEI COMMISSIS. Of legacies and trusts. The name of a title of the Pandects. Dig. 30.

DE LEPROSO AMOVENDO. Writ for removing a leper. A writ to remove a leper who thrust himself into the company of his neighbors in any parish, in public or private places, to their annoyance. Reg.Orig. 267; Fitzh.Nat.Brev. 234, E; New Nat.Brev. 521.

DE LIBERA FALDA. Writ of free fold. A species of quod *permittat.* Reg.Orig. 155.

DE LIBERA PISCARIA. Writ of free fishery. A species of *quod permittat.* Reg.Orig. 155.

DE LIBERO PASSAGIO. Writ of free passage. A species of quod *permittat.* Reg.Orig. 155.

DE LIBERTATE PROBANDA. Writ for proving liberty. A writ which lay for such as, being demanded for villeins or niefs, offered to prove themselves free. Reg.Orig. 87b; Fitzh.Nat.Brev. 77, F.

DE LIBERTATIBUS ALLOCANDIS. A writ of various forms, to enable a citizen to recover the liberties to which he was entitled. Fitzh.Nat. Brev. 229; Reg.Orig. 262.

DE LICENTIA TRANSFRETANDI. Writ of permission to cross the sea. And old writ directed to the wardens of the port of Dover, or other seaport in England, commanding them to permit the persons named in the writ to cross the sea from such port, on certain conditions. Reg.Orig. 193b.

DE LUNATICO INQUIRENDO. The name of a writ directed to the sheriff, directing him to inquire by good and lawful men whether the party charged is a lunatic or not. Den v. Clark, 10 N.J. L. 217, 18 Am.Dec. 417; Hart v. Deamer, 6 Wend., N.Y., 497; In re Lindsley, 44 N.J.Eq. 564, 15 A. 1, 6 Am.St.Rep. 913.

DE MAGNA ASSISA ELIGENDA. A writ by which the grand assise was chosen and summoned. Reg.Orig. 8; Fitzh.Nat.Brev. 4.

DE MAJORI ET MINOR! NON VARIANT JURA. Concerning greater and less laws do not vary. 2 Vern. 552.

DE MALO. Of illness. This phrase was frequently used to designate several species of essoin, *(q. v.,)* such as *de malo lecti,* of illness in bed; *de malo veniendi,* of illness (or misfortune) in coming to the place where the court sat; *de malo vilice,* of illness in the town where the court sat.

DE MANUCAPTIONE. Writ of manucaption, or mainprise. A writ which lay for one who, being taken and imprisoned on a charge of felony, had offered bail, which had been refused; requiring the sheriff to discharge him on his finding sufficient mainpernors or bail. Reg.Orig. 268b; Fitzh. Nat.Brev. 249, G.

DE MANUTENENDO. Writ of maintenance. A writ which lay against a person for the offense of maintenance. Reg.Orig. 189, 182b.

DE MEDIETATE LINGULE. Of the half tongue; half of one tongue and half of another. This phrase describes that species of jury which, at common law, was allowed in both civil and criminal cases where one of the parties was an alien, not speaking or understanding English. It was composed of six English denizens or natives and six of the alien's own countrymen.

DE MEDIO. A .writ in the nature of a writ of right, which lay where upon a subinfeudation the *mesne* (or middle) lord suffered his under-tenant or tenant *paravail* to be distrained upon by the lord paramount for the rent due him from the *mesne* lord. Booth, Real Act, 136.

DE MELIORIBUS DAMNIS. Of or for the better damages. A term used in practice to denote the election by a plaintiff against which of several defendants (where the damages have been assessed separately) he will take judgment. 1 Arch. Pr.K.B. 219; Knickerbacker v. Colver, 8 Cow., N.Y., 111.

Judgment *de melioribus damnis* (of, or for, the better damages). Where, in an action against several persons for a joint tort, the jury by mistake sever the damages by giving heavier damages against one defendant than against the others, the plaintiff may cure the defect by taking judgment for the greater damages *(de melioribus damnis)* against that defendant, and entering a *nolle prosequi (q. v.)* against the others. Sweet.

DE MERCATORIBUS. "Concerning merchants." The name of a statute passed in the eleventh year of Edw. I. (1233,) more commonly called the "Statute of Acton Burnel," authorizing the recognizance by statute merchant. See 2 Reeve, Eng.Law, 160-162; 2 Bl.Comm. 161.

DE MINIMIS NON CURAT LEX. The law does not care for, or take notice of, very small or trifling matters. The law does not concern itself about trifles. Cro.Eliz. 353. Thus, error in calculation of a fractional part of a penny will not be regarded. Hob. 88. So, the law will not, in general, notice the fraction of a day. Broom, Max. 142.

DE MINIS. Writ of threats. A writ which lay where a person was threatened with personal violence, or the destruction of his property, to compel the offender to keep the peace. Reg.Orig. 88b, 89; Fitzh.Nat.Brev. 79, G, 80.

DE MITTENDO TENOREM RECORD!. A writ to send the tenor of a record, or to exemplify it under the great seal. Reg.Orig. 220b.

DE MODERATA MISERICORDIA CAPIENDA. Writ for taking a moderate amercement. A writ, founded on *Magna Charta,* (c. 14,) which lay for one who was excessively amerced in a court not of record, directed to the lord of the court, or his bailiff, commanding him *to take a moderate amercement* of the party. Reg.Orig. 86b; Fitzh. Nat.Brev. 75, 76.

DE MODO DECIMANDI. Of a *modus* of tithing. A term applied in English ecclesiastical law to a prescription to have a special manner of tithing. 2 Bl.Comm. 29; 3 Steph.Comm. 130.

DE MOLENDINO DE NOVO ERECTO NON JACET PROHIBITIO. Cro.Jac. 429. A prohibition lies not against a newly-erected mill.

DE MORTE HOMINIS NULLA EST CUNCTATIO LONGA. Where the death of a human being is concerned, [in a matter of life and death,] no delay is [considered] long. Co.Litt. 134.

DE NATIVO HABENDO. A writ which lay for a lord directed to the sheriff, commanding him to apprehend a fugitive villein, and restore him, with all his chattels, to the lord. Reg.Orig. 87; Fitzh. Nat.Brev. 77.

DE NATURA BREVIUM. (Lat.) Concerning the nature of writs. The title of more than one textbook of English Medimval law. Maitland, 2 Sel. Essays in Anglo-Amer. Leg. Hist. 549. See Register of Writs.

DE NOMINE PROPRIO NON EST CURANDUM CUM IN SUBSTANTIA NON ERRETUR; QUIA NOMINA MUTABILIA SUNT, RES AUTEM IMMOBILES. 6 Coke, 66. As to the proper name, it is not to be regarded where it errs not in substance, because names are changeable, but things immutable.

DE NON APPARENTIBUS, ET NON EXISTENTIBUS, EADEM EST RATIO. 5 Coke, 6. As to things not apparent, and those not existing, the rule is the same. Bennehan v. Webb, 28 N.C. 61; U. S. v. Wilkinson, 12 How., U.S., 253, 13 L.Ed. 974, Fed.Cas.No. 16,6%; 5 Co. 6; 6 Bingh. N.C. 453; 7 Cl. & F. 872; 5 C.B. 53; 8 *Id.* 286; 1 Term 404; Quarles v. Quarles, 4 Mass. 685; 8 *Id.* 401; Broom, Max. 163, 166.

DE NON DECIMANDO. Of not paying tithes. A term applied in English ecclesiastical law to a prescription or claim to be entirely discharged of tithes, and to pay no compensation in lieu of them. 2 Bl. Comm. 31.

DE NON PROCEDENDO AD ASSISAM. A writ forbidding the justices from holding an assise in a particular case. Reg.Orig. 221.

DE NON RESIDENTIA CLERICI REGIS. An ancient writ where a parson was employed in the royal service, etc., to excuse and discharge him of non-residence. 2 Inst. 264.

DE NON SANE MEMORIE. L. Fr. Of unsound memory or mind; a phrase synonymous with non *compos mentis.*

DE NOVI OPERIS NUNCIATIONE. In the civil law. A form of interdict or injunction which lies in some cases where the defendant is about to erect a "new work" *(q.* v.) in derogation or injury of the plaintiff's rights.

DE NOVO. Anew; afresh; a second time. Archer v. High, 193 Miss. 361, 9 So.2d 647, 648; Duncan v. Mack, 59 Ariz. 36, 122 P.2d 215, 217. A *venire de* novo is a writ for summoning a jury for the second trial of a case which has been sent back from above for a new trial. Slaughter v. Martin, 9 Ala.App. 285, 63 So. 689, 690; Parker v. Lewis, 45 Okl. 807, 147 P. 310, 311.

DE NULLO, QUOD EST SUA NATURA INDIVISIBILE, ET DIVISIONEM NON PATITUR, NULLAM PARTEM HABEBIT VIDUA, SED SATISFACIAT EI AD VALENTIAM. Co. Litt. 32. A widow shall have no part of that which in its own nature is indivisible, and is not susceptible of division, but let the heir satisfy her with an equivalent.

DE NULLO TENEMENTO, QUOD TENETUR AD TERMINUM, FIT HOMAGII, FIT TAMEN INDE FIDELITATIS SACRAMENTUM. In no tenement which is held for a term of years is there an avail of homage; but there is the oath of fealty. Co. Litt. 67b.

DE ODIO ET ATIA. A writ anciently called *"breve de bono et malo,"* addressed to the sheriff to inquire whether a man committed to prison upon suspicion of murder were committed on just cause of suspicion, or only upon malice and ill will (propter *odium et atiam);* and if, upon the inquisition, due cause of suspicion did not appear, then there issued another writ for the sheriff to admit him to bail. 3 Bl.Comm. 128; Reg.Orig. 133.

DE OFFICE. L. Fr. Of office; in virtue of office; officially; in the discharge of ordinary duty.

DE ONERANDO PRO RATA PORTIONE. Writ for charging according to a rateable proportion. A writ which lay for a joint tenant:or tenant in common, who was distrained for more rent than his proportion of the land came to. Reg.Orig. 182; Fitzh.Nat.Brev. 234, H.

DE PACE ET LEGALITATE TENENDA. For keeping the peace, and for good behavior.

DE PACE ET PLAGIS. Of peace, (breach of peace,) and wounds. One of the kinds of criminal appeal formerly in use in England, and which lay in cases of assault, wounding, and breach of the peace. Bract. fol. 144; 2 Reeve, Eng.Law, 33.

DE PACE ET ROBERIA. Of peace [breach of peace] and robbery. One of the kinds of criminal appeal formerly in use in England, and which lay in cases of robbery and breach of the peace. Bract. fol. 146; 2 Reeve, Eng.Law, 37.

DE PALABRA. Span. By word; by parol. White, New Recop. b. 2, tit. 19, c. 3, § 2.

DE PARCO FRACTO. A writ or action for damages caused by a pound-breach *(q. v.).* It has long been obsolete. Co.Litt. 47b; 3 Bl.Comm. 146.

DE PARTITIONE FACIENDA. A writ which lay to make partition of lands or tenements held by several as coparceners, tenants in common, etc. Reg.Orig. 76; Fitzh.Nat.Brev. 61, R; Old Nat.Brev. 142.

DE PERAMBULATIONE FACIENDA. A writ which lay where there was a dispute as to the boundaries of two adjacent lordships or towns, directed to the sheriff, commanding him to take with him twelve discreet and lawful knights of his county and make the perambulation and set the bounds and limits in certainty. Fitzh.Nat. Brev. 309, D.

DE PIGNORE SURREPTO FURTI, ACTIO. In the civil law. An action to recover a pledge stolen. Inst. 4, 1, 14.

DE PIPA VINI CARIANDA. A writ of trespass for carrying a pipe of wine so carelessly that it was stove, and the contents lost. Reg.Orig. 110. Alluded to by Sir William Jones in his remarks on the case of Coggs v. Bernard, 2 Ld.Raym. 909. Jones, Bailm. 59.

DE PLACITO. Of a plea; of or in an action. Formal words used in declarations and other proceedings, as descriptive of the particular action brought.

DE PLAGIS ET MAHEMIO. Of wounds and mayhem. The name of a criminal appeal formerly in use in England, in cases of wounding and maiming. Bract. fol. 144b; 2 Reeve, Eng. Law, 34. See Appeal.

DE PLANO. Lat. On the ground; on a level. A term of the Roman law descriptive of the method of hearing causes, when the prtor stood on the ground with the suitors, instead of the more formal method when he occupied a bench or tribunal; hence informal, or summary.

DE PLEGIIS ACQUIETANDIS. Writ for acquitting or releasing pledges. A writ that lay for a surety, against him for whom he had become surety for the payment of a certain sum of money at a certain day, where the latter had not paid the money at the appointed day, and the surety was compelled to pay it. Reg.Orig. 158; Fitzh.Nat. Brev. 137, C; 3 Reeve, Eng.Law, 65.

DE PONENDO SIGILLUM AD EXCEPTIONEM. Writ for putting a seal to an exception. A writ by which justices were formerly commanded to put their seals to exceptions taken by a party in a suit. Reg.Orig. 182.

DE POST DISSEISINA. Writ of post disseisin. A writ which lay for him who, having recovered lands or tenements by *prcecipe quod reddat,* on default, or reddition, was again disseised by the former disseisor. Reg.Orig. 208; Fitzh.Nat.Brev. 190.

DE PRAROGATIVA REGIS. The statute 17 Edw. I., St. 1, c. 9, defining the prerogatives of the crown'on certain subjects, but especially directing that the king shall have ward of the lands of idiots, taking the profits without waste, and finding them necessaries. 2 Steph.Comm. 529.

DE PR)ESENTI. Of the present; in the present tense. See Per Verba de Praesenti.

DE PROCEDENDO AD JUDICIUM. A writ proceeding out of chancery and ordering the judges of any court to proceed to judgment. 3 Bla.Com. 109.

DE PROPRIETATE PROBANDA. Writ for proving property. A writ directed to the sheriff, to inquire of the property or goods distrained, where the defendant in an action of replevin claims the property. 3 Bl.Comm. 148; Reg.Orig. 85b.

DE QUARANTINA HABENDA. At common law, a writ which a widow entitled to quarantine might sue out in case the heir or other persons ejected her. It seems to have been a summary process, and required the sheriff, if no just cause were shown against it, speedily to put her into possession. Aiken v. Aiken, 12 Or. 203, 6 P. 682.

DE QUIBUS SUR DISSEISIN. An ancient writ of entry.

DE QUO, and DE QUIBUS. Of which. Formal words in the simple writ of entry, from which it was called a writ of entry "in the quo," or "in the *quibus."* 3 Reeve, Eng.Law, 33.

DE QUOTA LITIS. In the civil law. A contract by which one who has a claim difficult to recover agrees with another to give a part, for the purpose of obtaining his services to recover the rest. 1 Duval, note 201.

DE RAPTU VIRGINUM. Of the ravishment of maids. The name of an appeal formerly in use in England in cases of rape. Bract. fol. 147; 2 Reeve, Eng.Law, 38.

DE RATIONABILI PARTE BONORUM. A writ which lay for the widow (and children) of a deceased person against his executors, to recover a third part of the deceased's personalty, after payment of his debts, or to recover their reasonable part or share of his goods. 2 Bl.Comm. 492; Fitzh.Nat.Brev. 122, L; Hopkins v. Wright, 17 Tex. 36.

DE RATIONABILIBUS DIVISIS. Writ for fixing reasonable boundaries. A writ which lay to settle the boundaries between the lands of persons in different towns, where one complained of encroachment. Reg.Orig. 157b; Fitzh.Nat.Brev. 128, M; Rosc.Real Act. 31; 3 Reeve, Eng.Law, 48.

DE REBUS. Of things. The title of the third part of the Digests or Pandects, comprising books 12-19, inclusive.

DE REBUS DUBIIS. Of doubtful things or matters. Dig. 34, 5.

DE RECORDO ET PROCESSU MITTENDIS. Writ to send the record and process of a cause to a superior court; a species of writ of error. Reg. Orig. 209.

DE RECTO. Writ of right. Reg.Orig. 1, 2; Bract. fol. 327b. See Writ of Right.

DE RECTO DE ADVOCATIONE. Writ of right of advowson. Reg.Orig. 29b. A writ which lay for one who had an estate in an advowson to him and his heirs in fee-simple, if he were disturbed to present. Fitzh.Nat.Brev. 30, B. Abolished by St. 3 & 4 Wm. IV. c. 27.

DE RECTO DE RATIONABILI PARTE. Writ of right, of reasonable part. A writ which lay between privies in blood, as between brothers in gavelkind, or between sisters or other coparceners for lands in fee-simple, where one was deprived of his o her share by another. Reg.Orig. 3b; Fitzh. Nat.Brev. 9, B. Abolished by St. 3 & 4 Wm. IV. c. 27.

DE RECTO PATENS. Writ of right patent. Reg. Orig. 1.

DE REDISSEISINA. Writ of redisseisin. A writ which lay where a man recovered by assise of novel disseisin land, rent, or common, and the like, and was put in possession thereof by verdict, and afterward was disseised of the same land, rent, or common, by him by whom he was disseised before. Reg. Orig. 206b; Fitzh. Nat. Brev. 188, B.

DE REPARATIONE FACIENDA. A writ by which one tenant in common seeks to compel another to aid in repairing the property held in common. 8 Barn. & C. 269.

DE RESCUSSU. Writ of rescue or rescous. A writ which lay where cattle distrained, or persons arrested, were rescued from those taking them. Reg. Orig. 117, 118; Fitzh. Nat. Brev. 101, C, G.

DE RETORNO HABENDO. For having a return; to have a return. A term applied to the judgment for the defendant in an action of replevin, awarding him a return of the goods replevied; and to the writ or execution issued thereon. 2 Tidd, Pr. 993, 1038; 3 Bl. Comm. 149. Applied also to the sureties given by the plaintiff on commencing the action. Id. 147.

DE RIEN CULPABLE. L. Fr. Guilty of nothing; not guilty.

DE SA VIE. L. Fr. Of his or her life; of his own life; as distinguished from pur *autre vie,* for another's life. Litt. §§ 35, 36.

DE SALVA GARDIA. A writ of safeguard allowed to strangers seeking their rights in English courts, and apprehending violence or injury to their persons or property. Reg. Orig. 26.

DE SALVO CONDUCTU. A writ of safe conduct. Reg. Orig. 25b, 26.

DE SCACCARIO. Of or concerning the exchequer. The title of a statute passed in the fifty-first year of Henry III. 2 Reeve, Eng. Law, 61.

DE SCUTAGIO HABENDO. Writ for having (or to have) escuage or scutage. A writ which anciently lay against tenants by knight-service, to compel them to serve in the king's wars or send substitutes or to pay escuage; that is a sum of money. Fitzh. Nat. Brev. 83, C. The same writ lay for one who had already served in the king's army, or paid a fine instead, against those who held of him by knight-service, to recover his escuage or scutage. Reg. Orig. 88; Fitzh. Nat. Brev. 83, D, F.

DE SE BENE GERENDO. For behaving himself well; for his good behavior. Yelv. 90, 154.

DE SECTA AD MOLENDINUM. Of suit to a mill. A writ which lay to compel one to continue his custom (of grinding) at a mill. 3 Bl. Comm. 235; Fitzh. Nat. Brev. 122, M.

DE SIMILIBUS AD SIMILIA. EADEM RATIONE PROCEDENUM EST. From like things to like things we are to proceed by the same rule or reason, *[i. e.,* we are allowed to argue from the analogy of cases.] Branch, Princ.

DE SIMILIBUS IDEM EST JUDICANDUM. Of [respecting] like things, [in like cases, the judgment is to be the same. 7 Coke, 18.

DE SON TORT. L. Fr. Of his own wrong. A stranger who takes upon him to act as an executor without any just authority is called an "executor of his own wrong," *(de son tort.)* 2 Bl. Comm. 507; 2 Steph. Comm. 244.

An *executor de son tort* is an executor of his own wrong. A person who assumes to act as executor of an estate. out any lawful warrant or authority, but who, by his intermeddling, makes himself liable as an executor to a certain extent. If a stranger takes upon him to act as executor without any just authority, (as by intermeddling with the goods of the deceased, and many other transactions,) he is called in law an "executor of his own wrong," *de son tort.* 2 Bl.Comm. 507. Allen v. Hurst, 120 Ga. 763, 48 S.E. 341; In re Pedroli's Estate, 47 Nev. 313, 21 P. 241, 242, 31 A.L.R. 841; Walker v. Portland Savings Bank, 113 Me. 353, 93 A. 1025, L.R.A.1915E, 840; Lowery v. Lowery, 225 Ala. 376, 143 So. 556, 557.

DE SON TORT DEMESNE. Of his own wrong. The law French equivalent of the Latin phrase *do injuria (q. v.).*

DE STATUTO MERCATORIO. The writ of statute merchant. Reg. Orig. 146b.

DE STATUTO STAPULIE. The writ of statute staple. Reg. Orig. 151.

DE SUPERONERATIONE PASTURE. Writ of surcharge of pasture. A judicial writ which lay for him who was impleaded in the county court, for surcharging a common with his cattle, in a case where he was formerly impleaded for it in the same court, and the cause was removed into one of the courts at Westminster. Reg. Jud. 36b.

DE TABULIS EXHIBENDIS. Of showing the tablets of a will. Dig. 43, 5.

DE TALLAGIO NON CONCEDENDO. Of not allowing talliage. The name given to the statutes 25 and 34 Edw. I., restricting the power of the king to grant talliage. 2 Inst. 532; 2 Reeve, Eng. Law, 104.

DE TEMPORE CUJUS CONTRARIUM MEMORIA HOMINUM NON EXISTIT. From time whereof the memory of man does not exist to the contrary. Litt. § 170.

DE TEMPORE IN TEMPUS ET AD OMNIA TEMPORA. From time to time, and at all times. Townsh. Pl. 17.

DE TEMPS DONT MEMORIE NE COURT, L. Fr. From time whereof memory runneth not; time out of memory of man. Litt. §§ 143, 145, 170.

DE TESTAMENTIS. Of testaments. The title of the fifth part of the Digests or Pandects; comprising the twenty-eighth to the thirty-sixth books, both inclusive.

DE THEOLONIO. A writ which lay for a person who was prevented from taking toll. Reg. Orig. 103.

DE TRANSGRESSIONE. A writ of trespass. Reg. Orig. 92.

DE TRANSGRESSIONE, AD AUDIENDUM ET TERMINANDUM. A writ or commission for the hearing and determining any outrage or misdemeanor.

DE UNA PARTE. A deed *de una parte* is one where only one party grants, gives, or binds himself to do a thing to another. It differs from a deed *inter partes, (q. v.)* 2 Bouv. Inst. no. 2001.

DE UXORE RAPTA ET ABDUCTA. A writ which lay where a man's wife had been ravished and carried away. A species of writ of trespass. Reg. Orig. 97; Fitzh. Nat. Brev. 89, 0; 3 BL Comm. 139.

DE VASTO. Writ of waste. A writ which might be brought by him who had the immediate estate of inheritance in reversion or remainder, against the tenant for life, in dower, by curtesy, or for years, where the latter had committed *waste* in lands; calling upon the tenant to appear and show cause why he committed waste and destruction in the place named, to the disinherison *(ad exhceredationem)* of the plaintiff. Fitzh. Nat. Brev. 55, C; 3 Bl. Comm. 227, 228. Abolished by St. 3 & 4 Wm. IV, c. 27. 3 Steph. Comm. 506.

DE VENTRE INSPICIENDO. A writ to inspect the body, where a woman feigns to be pregnant, to see whether she is with child. It lies for the heir presumptive to examine a widow suspected to be feigning pregnancy in order to enable a supposititious heir to obtain the estate. 1 Bl. Comm. 456; 2 Steph. Comm. 287. It lay also where a woman sentenced to death pleaded pregnancy. 4 Bl. Comm. 395. This writ has been recognized in America. 2 Chand. Crim. Tr. 381.

DE VERBO IN VERBUM. Word for word. Bract. fol. 138b. Literally, from word to word.

DE VERBORUM SIGNIFICATIONE. Of the signification of words. An important title of the Digests or Pandects, (Dig. 50, 16,) consisting entirely of definitions of words and phrases used in the Roman law.

DE VI LAICA AMOVENDA. Writ of (or for) removing lay force. A writ which lay where two parsons contended for a church, and one of them entered into it with a great number of *laymen,* and held out the other *vi et armis;* then he that was holden out had this writ directed to the sheriff, that he remove the force. Reg. Orig. 59; Fitzh. Nat. Brev. 54, D.

DE VICINETQ. From the neighborhood, or vicinage. 3 Bl.Comm. 360. A term applied to a jury.

DE WARRANTIA CHARTIE. Writ of warranty of charter. A writ which lay for him who was enfeoffed, with clause of warranty, [in the charter of feoffment,1 and was afterwards impleaded in an assise or other action, in which he could not *vouch* or call to warranty; in which case he might have this writ against the feoffor, or his heir, to compel him to warrant the land unto him. Reg. Orig. 157b; Fitzh. Nat. Brev. 134, D. Abolished by St. 3 & 4 Wm. IV, c. 27.

DE WARRANTIA DIET. A writ that lay where a man had a day in any action to appear in proper person, and the king at that day, or before, employed him in some service, so that he could not appear at the day in court. It was directed to the justices, that they should not record him to be in default for his not appearing. Fitzh. Nat. Brev. 17, A; Termes de la Ley.

DEACON. In ecclesiastical law. A minister or servant in the church, whose office is to assist the priest in divine service and the distribution of the sacrament. It is the lowest degree of holy orders in the Church of England. 2 Steph. Comm. 660.

DEAD BODY. A corpse. The body of a human being, deprived of life, but not yet entirely disintegrated. Meads v. Dougherty County, 98 Ga. 697, 25 S.E. 915.

DEAD-BORN. A dead-born child is to be considered as if it had never been conceived or born; in other words, it is presumed it never had life, it being a maxim of the common law that *mortuus exitus non est exitus* (a dead birth is no birth). Co. Litt. 29 *b.* See Marsellis v. Thalhimer, 2 Paige, Ch., N.Y., 35, 21 Am.Dec. 66; 4 Ves. 334. This is also the doctrine of the civil law. Dig. 50. 16. 129; La.Civ.Code, art. 28; Domat, liv. prel. t. 2, s. 1, nn. 4, 6.

DEAD FREIGHT. The amount paid by a charterer for that part of the vessel's capacity which he does not occupy although he has contracted for it. Gray v. Carr, L. R. 6 Q. B. 528; Phillips v. Rodie, 15 East 547.

When the charterer of a vessel has shipped part of the goods on board, and is not ready to ship the remainder, the master, unless restrained by his special contract, may take other goods on board, and the amount which is not supplied, required to complete the cargo, is considered *dead freight.* The dead freight is to be calculated according to the actual capacity of the vessel. 3 Chit.Com.Law 399; 2 Stark. 450; McCull.Com.Dic.

"Dead freight" is the compensation payable to the shipowner when the charterer has failed to ship a full cargo, and "freight" is recompense the shipowner is to receive for carrying the cargo into its port of discharge. Kish v. Taylor (1912) A.C. 604, 613, citing Carver's Carriage By Sea, par. 666.

DEAD LETTER. A term sometimes applied to an act that has become obsolete by long disuse.

DEAD LETTERS. Letters which the postal department has not been able to deliver to the persons for whom they were intended. They are sent to the "dead-letter office," where they are opened, and returned to the writer if his address can be ascertained.

DEAD MAN'S PART. In English law, that portion of the effects of a deceased person which, by the custom of London and York, is allowed to the administrator; being, where the deceased leaves a widow and children, one-third; where he leaves only a widow or only children, one-half; and, where he leaves neither, the whole. This portion the administrator was wont to apply to his own use, till the statute 1 Jac. II, c. 17, declared that the same should be subject to the statute of distributions. 2 Bl. Comm. 518; 2 Steph. Comm. 254; 4 Reeve, Eng.Law, 83. A similar portion in Scotch law is called "dead's part," *(q.* v.)

DEAD-PLEDGE. A mortgage, *mortuum vadium.*

DEAD RENT, In English law. A rent payable on a mining lease in addition to a royalty, so called because it is payable although the mine may not be worked.

DEAD STORAGE. The storage, especially of automobiles in public garages, where automobiles not in use are to remain uninterruptedly for a time, sometimes for the season. Hogan v. O'Brien, 123 Misc. 865, 206 N.Y.S. 831.

DEAD USE. A future use.

DEAD WIRE. One which never carries electricity, or which, at some particular time, is not charged with an electric current. City of Shawnee v. Sears, 39 Okl. 789, 137 P. 107, 110, 50 L.R.A.,N.S., 885.

DEAD'S PART. In Scotch law. The part remaining over beyond the shares secured to the widow and children by law. Of this the testator had the unqualified disposal. Bell; Stair, Inst. lib. iii. tit. 4, § 24; Paterson, Comp. §§ 674, 848, 902.

DEADHEAD. A term applied to persons other than the officers, agents, or employees of a railroad company who are permitted by the company to travel on the road without paying any fare therefor. Gardner v. Hall, 61 N.C. 21.

DEADLY FEUD. In old European law. A profession of irreconcilable hatred till a person is revenged even by the death of his enemy.

DEADLY WEAPON. Such weapons or instruments as are made and designed for offensive or defensive purposes, or for the destruction of life or the infliction of injury. Commonwealth v. Branham, 8 Bush (Ky.) 387. One likely to produce death or great bodily harm. People v. Fuqua, 58 Cal. 245; State v. Hedrick, 99 W.Va. 529, 130 S.E. 295, 298.

One which, from the manner used, is calculated or likely to produce death or serious bodily injury. Harris v. State, 72 Tex.Cr.R. 491, 162 S.W. 1150, 1151; Burgess v. Commonwealth, 176 Ky. 326, 195 S.W. 445.

Any weapon darikerous to life, or with which death may be easily and readily produced. Parman v. Lemmon, 119 Kan. 323, 244 P. 227, 229, 44 A.L.R. 1500; People v. Dwyer, 324 Ill. 363, 155 N.E. 316, 317.

The term may denote any instrument so used as to be likely to produce death or great bodily harm, and hence may include an automobile, especially within the meaning of statutes pertaining to assault. Williamson v. State, 92 Fla. 980, 111 So. 124, 125, 53 A.L.R. 250. But an automobile, when used innocently or negligently so as to be likely to produce death or bodily injury, or to actually produce them without criminal liability, has been held not to be a deadly weapon within the meaning of the criminal law. People v. Cash, 326 Ill. 104, 157 N.E. 76, 79; State v. Clark, 196 Iowa, 1134, 196 N.W. 82, 84.

DEADLY WEAPON PER SE. A weapon which of itself is deadly or one which would ordinarily result in death by its use. Baylor v. State, 151 Tex. Cr.R. 365, 208 S.W.2d 558, 561.

DEADMAN. As applied to a lifting appliance, a piece of timber placed across an opening in the ground to which a snatch hook is attached. The Teddy, D.C.N.Y., 226 F. 498, 500.

DEAF AND DUMB. A man that is born deaf, dumb, and blind is looked upon by the law as in the same state with an idiot, he being supposed incapable of any understanding. 1 Bl. Comm. 304. See, however, Alexier v. Matzke, 151 Mich. 36, 115 N.W. 251, 123 Am.St.Rep. 255. Nevertheless, a deaf and dumb person may be tried for felony if the prisoner can be made to understand by means of signs. 1 Bish. Cr. L. § 395; Commonwealth v. Hill, 14 Mass. 207; State v. Harris, 53 N.C. 136, 78 Am.Dec. 272; 1 Houst.Cr.Rep. 291; Felts v. Murphy, 201 U.S. 123, 26 S.Ct. 366, 50 L. Ed. 689.

DEAFFOREST. See Disafforest.

DEAL, n. An arrangement to attain a desired result by a combination of interested parties; Gaut v. Dunlap, Tex.Civ.App., 188 S.W. 1020, 1021; Ball v. Davenport, 170 Iowa 33, 152 N.W. 69, 71; the prime object being usually the purchase, sale, or exchange of property for a profit; Chambers v. Johnston, 180 Ky. 73, 201 S.W. 488, 493. Also, an act of buying and selling; a bargain. Oregon Home Builders v: Montgomery Inv. Co., 94 Or. 349, 184 P. 487, 493.

A "deal" between two parties includes any transaction of any kind between them, and when applied to a transaction concerning a house or block, the term does not necessarily imply an agreement to sell or convey, for the agreement might be to rent or lease the property. Osborne v. Moore, 112 Tex. 361, 247 S.W. 498, 499.

DEAL, v. To traffic; to transact business; to trade. See Borg v. International Silver Co., C.C.A.N.Y., 11 F.2d 147, 150. Also, to act between two persons, to intervene, or to have to do with. State v. Morro, 313 Mo. 114, 280 S.W. 697, 699.

To "deal" in a commodity, however, such as automobiles, within the meaning of a privilege tax statute, means something more than the making of an occasional sale in a municipality where the seller has no place of business, and no stock ,of automobiles on hand. City of Pascagoula v. Carter, 136 Miss. 750, 101 So. 687, 688.

As to dealing in futures, see Futures.

DEALER. In the popular sense, one who buys to one who buys to keep, or makes to sell. Commonwealth v. Lutz, 284 Pa. 184, 130 A. 410, 411; Moore v. State, 148 Ga. 457, 97 S.E. 76, 77; In re I. Rheinstrom & Sons Co., D.C.Ky., 207 F. 119, 136.

The term includes one who carries on the business of selling goods, wares, and merchandise, manufactured by him at a store or warehouse apart from his own shop, or manufactory. Atlantic Refining Co. v. Van Valkenburg, 265 Pa. 456, 109 A. 208, 209.

A "dealer," as in narcotics, is one who sells promiscuously,-one who is ready and willing to sell to anyone applying to purchase, if unaware that they are officers or undercover men. Taylor v. U. S., C.C.A.Mo., 19 F.2d 813, 815.

Under Blue Sky Laws, a "dealer" Is one making successive sales as a business. People v. glum, 213 Mich. 651, 182 N.W. 136, 138. 15 A.L.R. 253 ; State v. Barrett, 121 Or. 57, 254 P. 198, 200. Compare, also, Commonwealth v. Silverman, 220 Mass. 552, 108 N.E. 358, Ann.Cas.1917A, 948.

For various definitions under particular statutes, see State v. Perkins, 88 Vt. 121, 92 A. 1, 2 (dealer in evergreen

trees); Texas Co. v. State, 31 Ariz. 485, 254 P. 1060, 1063, 53 A.L.R. 258 (dealer in gasoline); Pierce v. Hutchinson, 241 Mass. 557, 136 N.E. 261, 263 (dealer in motor vehicles).

Makers of an accommodation note are deemed dealers with whoever discounts it. Vernon v. Manhattan Co., 17 Wend., N.Y., 524.

Dealers' talk. That picturesque and laudatory style affected by nearly every trader in setting forth the attractive qualities of the goods he offers for sale. Prince v. Brackett, Shaw & Lunt Co., 125 Me, 31, 130 A. 509, 511. The puffing of goods to induce the sale thereof; not regarded in law as fraudulent unless accompanied by some artifice to deceive the purchaser and throw him off his guard or some concealment of intrinsic defects not easily discoverable. Kimball v. Bangs, 144 Mass, 321, 11 N.E. 113; Williams v. Fouche, 164 Ga, 311, 138 S.E. 580, 581.

Real estate dealer. One who, on his own account and as a business independent of that of another real estate agent, engages for a consideration to aid others, whether the owners of the property or their agents, in selling real estate which is offered for sale. Horsley v. Woodley, 12 Ga.App. 456, 78 S.E. 260, 261.

DEALINGS. Transactions in the course of trade or business;-held to include payments to a bankrupt. Moody & M. 137; 3 Car. & P. 85.

DEAN. In English ecclesiastical law. An ecclesiastical dignitary who presides over the chapter of a cathedral, and is next in rank to the bishop. So called from having been originally appointed to superintend *ten* canons or prebendaries. 1 Bl. Comm, 382; Co, Litt, 95; Spelman.

There are several kinds of deans, namely: Deans of chapters; deans of peculiars; rural deans; deans in the colleges; honorary deans; deans of provinces.

DEAN AND CHAPTER. In ecclesiastical law. The council of a bishop, to assist him with their advice in the religious and also in the temporal affairs of the see. 3 Co, 75; 1 Bla. Comm. 382; Co. Litt 103, 300; *Termes de la Ley;* 2 Burn, Eccl, Law 120.

DEAN OF THE ARCHES. The presiding judge of the Court of Arches. He is also an assistant judge in the court of admiralty. 1 Kent, Comm, 371; 3 Steph. Comm. 727.

DEATH. The cessation of life; the ceasing to exist; defined by physicians as a total stoppage of the circulation of the blood, and a cessation of the animal and vital functions consequent thereon, such as respiration, pulsation, etc.

This is "natural death," in contradistinction to "civil death," and, also, to "violent death," See those titles, infra.

Civil death. The state of a person who, though possessing natural life, has lost all his civil rights, and as to them, is considered as dead. Quick v. Western Ry. of Alabama, 207 Ala. 376, 92 So, 608, 609. At common law, the extinction of civil rights and relations, so that the property of a person declared civilly dead passes to his heirs as if dead in fact. *Holmes v.* King, 216 Ala. 412, 113 So. 274, 276.

The "civil death" spoken of In the books, *is* of two kinds : (1) Where there is a total extinction of the civil rights and relations of the party, so that he can neither take nor hold property, and his heirs succeed to his estate in the same manner as if he were really dead, or the estate is forfeited to the crown. (2) Where there is an incapacity to hold property, or to sue in the king's courts, attended with forfeiture of the estate to the crown. Of the first kind, are the cases of monks professed, and abjuration of the realm; all the other cases are of the second kind. Strictly speaking, there but two cases of civil death; those of a monk professed, and an abjuration of the realm. In re Erskine, C.C.A.Ind., 1 F.2d 149, 152. See, generally, Chit.Crim.Law 723; Co.Litt. §§ 133, 199, note; Littleton § 200; 1 Bl.Comm. 132; Avery v. Everett, 110 N.Y. 317, 18 N.E. 148, 1 L.R.A. 264; In re Donnelly's Estate, 125 Cal. 417, 58 P. 61, 73 Am.St.Rep. 62.

In New York a person sentenced to imprisonment is thereafter deemed civilly dead under Penal Law § 511. See Platner v. Sherwood, 6 Johns.Ch., N.Y., 118; Troup v. Wood, 4 Johns.Ch., N.Y., 228, 260,

Death-bed. In Scotch law. A state of sickness which ends in death. Ersk. Inst. 3, 8, 95.

Death-bed deed. In Scotch law. A deed made by a person while laboring under a distemper of which he afterwards died. Ersk. Inst. 3, 8, 96. A deed is understood to be in death-bed, if, before signing and delivery thereof, the grantor was sick, and never convalesced thereafter. 1 Forbes, Inst. pt. 3, b. 2, c. 4, tit. 1, § 1. But it is not necessary that he should be actually confined to his bed at the time of making the deed. Bell.

Death duty. A charge or toll which the state makes upon the right to transmit or to receive property on the death of the owner. In re Heck's Estate, 120 Or, 80, 250 P. 735, 736. The usual name in England for an inheritance tax.

Death warrant. A warrant from the proper executive authority appointing the time and place for the execution of the sentence of death upon a convict judicially condemned to suffer that penalty.

Death watch. A special guard set to watch a prisoner condemned to death, for some days before the time for the execution, the special purpose being to prevent any escape or any attempt to anticipate the sentence.

Natural death. A death which occurs by the unassisted operation of natural causes, as distinguished not only from "civil death," but also from "violent death" *(q.* v.)

Presumptive death. That which is presumed from proof of a long continued absence unheard from and unexplained. The general rule, as now understood, is that the presumption of the duration of life ceases at the expiration of seven years from the time when the person was last known to be living; and after the lapse of that period there is a presumption of death. Smith v. Knowlton, 11 N.H. 197; Chamb. Best Ev. 304, note, collecting the cases; 4 U.C.Q.B. 510; 1 Greenl. Ev. § 41; 5 B. & Ad. 86; Maley v. Pennsylvania R. Co., 258 Pa. 73, 101 A. 911, L.R.A.1918A, 563. In most of the states the subject is regulated by statute.

The better opinion is that there is no presumption as to the time of death. Davie v. Briggs, .97 U.S. 628, 24 L.Ed. 1086; Chamb.Best Ev. 305; 2 Brett, Corm 941; 2 M. & W. 894. But it has been held that death is presumed to take place at the end of the seven years' absence; Brotherhood of Locomotive Firemen and Engineers v. Nash, 144 Md. 623, 125 A. 441; Apitz v. Supreme Lodge Knights and Ladies of Honor, 274 Ill. 196, 113 N.E. 63, L.R.A.1917A, 183; or at a time of peril, Conner v. New York Life Ins. Co., 166 N.Y.S. 985, 179 App.Div. 596.

Violent death. One caused or accelerated by the interference of human agency ;—distinguished from "natural death."

DEATH'S PART, See Dead's Part; Dead Man's Part.

DEATHSMAN. The executioner; hangman; he that executes the extreme penalty of the law.

DEATH TRAP. A structure or situation involving imminent risk of death or a place apparently safe but actually very dangerous to life. Benson v. Missouri, K. & T. R. Co., Tex.Civ.App., 200 S.W. 2d 233, 240.

DEBASING. This word, in a statute making it slander to charge another with being guilty of some "debasing act which may exclude him from society," has reference to those repulsive acts which would cause him to be shunned or avoided, in the same way as would a contagious disease. Morris v. Evans, 22 Ga.App. 11, 95 S.E. 385, 386.

DEBAUCH. To corrupt one's manners; to make lewd; to mar or spoil; to entice; and, when used of a woman, to seduce, or corrupt with lewdness. Litton v. Woliver, 126 Va. 32, 100 S.E. 827, 828; State v. Howard, 264 Mo. 386, 175 S.W. 58, 59. Originally, the term had a limited signification, meaning to entice or draw one away from his work, employment, or duty; and from this sense its application has enlarged to include the corruption of manners and violation of the person. In RS modern legal sense, the word carries with it the idea of "carnal knowledge," aggravated by assault, violent seduction, ravishment. Koenig v. Nott, 2 Hilt., N.Y., 323. And see State v. Curran, 51 Iowa, 112, 49 N.W. 1006. See, also, Debauchery.

DEBAUCHERY. In general, excessive indulgence in sensual pleasures; in a narrower sense, sexual immorality or excesses, or the unlawful indulgence of lust. Suslak v. United States, C.C.A. Mont., 213 F. 913, 917; Gillette v. United States, C.C.A.N.D., 236 F. 215, 217.

In the White Slave Act, Act June 25, 1910, c. 395, 36 Stat. 825, 18 U.S.C.A. § 2421 et seq., making it an offense to procure the interstate transportation of a girl for the purpose of prostitution and debauchery, "debauchery" is not limited to the meaning of seduction, but includes a purpose to expose her to such influence as will naturally and inevitably so corrupt her character as to lead her to acts of sexual immorality, or, if she is already a sexually corrupt woman, a purpose that she shall engage or continue more or less habitually in sexually immoral practices. Van Pelt v. United States, C.C.A.Va., 240 F. 346, 348, L.R. A.1917E, 1135.

DEBENTURE. A certificate given by the collector of a port, under the United States customs laws, to the effect that an importer of merchandise therein named is entitled to a drawback, *(q. v.,)* specifying the amount and time when payable. See Act Cong. March 2, 1799, § 80, 1 St. at Large 687.

An instrument in use in some government departments, particularly in England, by which the government is charged to pay to a creditor or his assigns the sum found due on auditing his accounts. Brande; Blount.

A security for a loan of money issued by a public company, usually creating a charge on the whole or a part of the company's stock and property, though not necessarily in the form of a mortgage. They are subject to certain regulations as to the mode of transfer, and ordinarily have coupons attached to facilitate the payment of interest. They are generally issued in a series, with provision that they shall rank part *passe* in proportion to their amounts. See Bank v. Atkins, 72 Vt. 33, 47 A. 176; Cavanagh, Mon. Sec. 267; 56 L.J.R.Ch.D. 815; Brice, *Ultra Vires* (2d Ed.) 279.

A charge in writing on certain property, with the repayment at a time fixed, of money lent by a person therein named at a given interest.

Any instrument (other than a covering or trust deed) which either creates or agrees to create a debt in favor of one person or corporation, or several persons or corporations, or acknowledges such debt. Simonson, Debentures, 5.

A debenture is distinguished (1) from a mortgage which is an actual transfer of property, (2) from a bond which does not directly affect property, and (3) from a mere charge on property which is individualized and does not form part of a series of similar charges; Cay.Mon.Sec. 267, citing L.R. 10 Ch.D. 530, 681; 15 Ch.D. 465; 21 Ch. D. 762; L.R. 7 App.Cas. 673; Jones, Corp. B. & M. 1 32; 10 H.L.C. 191; L.R. 2 Ch.D. 337.

DEBENTURE INDENTURE. An indenture containing obligations not secured by a mortgage or other collateral; a key instrument in the process of long term debt financing for general business corporations. Its effect is to put the debentureholder in substantially the same practical position as a bondholder secured by a first mortgage. See "Business Lawyer" ( April 1966, pp. 678, 679, 680).

DEBENTURE STOCK. A stock or fund representing money borrowed by a company or public body, in England, and charged on the whole or part of its property. An issue of stock usually irredeemable and transferable in any amount, not including a fraction of a pound.

The terminability and fixity in amount of debentures being inconvenient to lenders has led to their being in many cases superseded by debenture stock. Whart. Lex.

Debet esse finis litium. There ought to be an end of suits; there should be some period put to litigation. Jenk. Cent. 61.

DEBET ET DETINET. (Lat. He owes and detains.) Words anciently used in the original writ, (and now, in English, in the plaintiff's declara7 tion,) in an action of debt, where it was brought by one of the original contracting parties who personally gave the credit, against the other who personally incurred the debt, or against his heirs, if

they were bound to the payment; as by the obligee against the obligor, by the landlord against the tenant, etc. The declaration, in such cases, states that the defendant *"owes* to," as well as *"detains* from," the plaintiff the debt or thing in question; and hence the action is said to be "in the *debet et detinet."* Where the declaration merely states that the defendant *detains* the debt, (as in actions by and against an executor for a debt due to or from the testator,) the action is said to be "in the *detinet"* alone. Fitzh. Nat. Brev. 119, G.; 3 Bl. Comm. 155.

DEBET ET SOLET. (Lat. He owes and is used to.) Where a man sues in a writ of right or to recover any right of which he is for the first time disseised, as of a suit at a mill or in case of a writ of *quod permittat,* he brings his writ in the *debet et solet.* Reg. Orig. 144a; Fitzh. Nat. Brev. 122, M.

Debet quis juri subjacere ubi delinquit. One [every one] ought to be subject to the law [of the place] where he offends. 3 Inst. 34. This maxim is taken from Bracton. Bract. fol. 154b. Finch, Law, 14, 36; Wing. Max. 113; 3 Co. 231; 8 Scott N. R. 567.

DEBET SINE BREVE. (Lat. He owes without declaration filed.) Used in relation to a confession of judgment.

Debet sua cuique domus esse perfugium tutissimum. Every man's house should be a perfectly safe refuge. Clason v. Shotwell, 12 Johns., N.Y., 31, 54.

Debile fundamentum fallit opus. A weak foundation frustrates [or renders vain] the work [built upon it.] Shep. Touch. 60; Noy, Max. 5, max. 12; Finch, Law, b. 1, ch. 3. When the foundation fails, all goes to the ground; as, where the cause of action fails, the action itself must of necessity fail. Wing. Max. 113, 114, max. 40; Broom, Max. 180.

DEBIT. A sum charged as due or owing. The term is used in book-keeping to denote the left page of the ledger, or the charging of a person or an account with all that is supplied to or paid out for him or for the subject of the account. Also, the balance of an account where it is shown that something remains due to the party keeping the account.

In industrial insurance nomenclature, a certain identified territory in which a solicitor operates by soliciting new business and taking care, as through collection of the debit accounts, of the company's patrons for insurance theretofore written; such insurance being usually written in small amounts on the weekly payment plan. Jones v. Prudential Ins. Co. of America, 173 Mo.App. 1, 155 S.W. 1106, 1107.

DEBITA FUNDI. L. Lat. In Scotch law. Debts secured upon land. Ersk. Inst. 4, 1, 11.

DEBITA LAICORUM. L. Lat. In old English law. Debts of the laity, or of lay persons. Debts recoverable in the civil courts. Crabb. Eng. Law, 107.

Debita sequuntur personam debitoris. Debts follow the person of the debtor; that is, they have no locality, and may be collected wherever the debtor can be found. 2 Kent, Comm. 429; Story, Confl. Laws, § 362; Halkers, Max. 13.

DEBITOR. In the civil and old English law. A debtor.

Debitor non prasumitur donare. A debtor is not presumed to make a gift. Whatever disposition he makes of his property is supposed to be in satisfaction of his debts. 1 Kames, Eq. 212. Where a debtor gives money or goods, or grants land to his creditor, the natural presumption is that he means to get free from his obligation, and not to make a present, unless donation be expressed. Ersk. Inst. 3, 3, 93; Dig. 50, 16, 108; 1 P. Wms. 239; Wh. & Tud. L. Cas. Eq. 378.

Debitorum pactionibus creditorum petitio nec tolli nec minui potest. 1 Poth. Obl. 108; Broom, Max. 697, Bart. Max. 115. The rights of creditors can neither be taken away nor diminished by agreements among (or of) the debtors.

DEBITRIX. A female debtor.

DEBITUM. Something due, or owing, a debt.

Debitum et contractus sunt nullius loci. Debt and contract are of [belong to] no place; have no particular locality. 7 Co. 61. The obligation in these cases is purely personal, and actions to enforce it may be brought anywhere. 2 Inst. 231; Story, Confl. Laws, § 362; 1 Smith, Lead. Cas. 340, 363; 7 M. & G. 1019, n.

DEBITUM IN PRIESENTI SOLVENDUM IN FUTURO. A debt or obligation complete when contracted, but of which the performance cannot be required till some future period.

DEBITUM SINE BREVI. L. Lat. Debt without writ; debt without a declaration. In old practice, this term denoted an action begun by original bill, instead of by writ. In modern usage, it is sometimes applies to a debt evidenced by confession of judgment without suit. The equivalent Norman-French phrase was *"debit sans breve."* Both are abbreviated to d. *s. b.*

DEBT. A sum of money due by certain and express agreement; as by bond for a determinate sum, a bill or note, a special bargain, or a rent reserved on a lease, where the amount is fixed and specific, and does not depend upon any subsequent valuation to settle it. 3 Bl.Comm. 154; Hagar v. Reclamation Dist., 111 U.S. 701, 4 S.Ct. 663, 28 L.Ed. 569; Neilson v. Title Guaranty & Surety Co., 101 Or. 262, 199 P. 948, 951; Shultz v. Ritterbusch, 38 Okl. 478, 134 P. 961, 968; W. S. Tyler Co. v. Deutsche Dampfschifffahrts Gesellschaft Hansa, Bremen, Germany, D.C.Ohio, 276 F. 134, 136.

Ail unconditional promise to pay a fixed sum at a specified time. Lowery v. Fuller, 221 Mo.App. 495, 281 S.W. 968, 972. A contractual obligation to pay in the future for considerations received in the present. Lesser *v.* Warren Borough, 237 Pa. 501, 85 A. 839, 841, 43 L.R.A.,N.S., 839. The word "debt" carries with it the requirement of certainty, the foundation of promise by express contract, and necessarily implies legality. Clinton Mining & Mineral Co. v. Beacon, C.C.A.Pa., 266 F. 621, 622, 14 A.L.R. 263.

The word "debt," in the definition of a mortgage as a hypothecation or pledge of property *as* security for a debt, means a duty or obligation to pay, for the enforcement of which an action lies. Stollenwerck v. Marks & Gayle, 188 Ala. 587, 65 So. 1024, 1027, Ann.Cas.1917C, 981; Gibson v. Hopkins, 80 W.Va. 756, 93 S.E. 826, 827.

Standing alone, the word "debt" is *as* applicable to *a* sum of money which has been promised at a future day, as to a sum of money now due and payable. To distinguish between the two, it may be said of the former that it is a debt owing, and of the latter that it is a debt due. A sum of money which is certainly and in all events payable is a debt, without regard to the fact whether it be payable now or at a future time. A sum payable upon a contingency, however, is not a debt, or does not become a debt until the contingency has happened. People v. Arguello, 37 Cal. 524..

A sum of money arising upon a contract, express or implied. Kimpton v. Bronson, 45 Barb. N.Y., 618; Johnson v. Garner, D.C.Nev., 233 F. 756, 767. Also, the obligation to pay a sum certain; Indian Refining Co. v. Taylor, 195 Ind. 223, 143 N.E. 682, 689; or a sum which may be ascertained by simple mathematical calculation from known facts; H. G. Kilbourne Co. v. Standard Stamp Affixer Co., 216 Mass. 118, 103 N.E. 469, 470; regardless of whether the liability arises by contract or is implied or imposed by law; State v. Latham, 136 Tenn. 30, 188 S.W. 534, 535; Lindstrom v. Spicher, 53 N.D. 195, 205 N.W. 231, 233, 41 A.L.R. 968.

A "debt" is a specified sum of money owing to one person from another, including not only the obligation of the debtor to pay, but the right of the creditor to receive and enforce payment. Angola Brick & Tile Co. v. Millgrove School Tp., Steuben County, 73 Ind.App. 557, 127 N.E. 855, 856; Dewey v. Denson, 31 Ga.App. 352, 120 S.E. 805, 807.

A fixed and certain obligation to pay money or some other valuable thing or things, either in the present or in the future. Burke v. Boulder Milling *&* Elevator Co., 77 Colo. 230, 235 P. 574, 575.

In a still more general sense, that which is due from one person to another, whether money, goods, or services. Holman v. Hollis, 94 Fla. 614, 114 So. 254, 255; State v. State Board of Examiners, 74 Mont. 1, 238 P. 316, 323.

A "debt" is an obligation arising otherwise than by sentence by a court for a breach of the public peace or for crime. Ruggles v. State, 120 Md. 553, 87 A. 1080, 1084.

In a broad sense, any duty to respond to another in money, labor, or service; it may even mean a moral or honorary obligation, unenforceable by legal action. U. S. Sugar Equalization Board v. P. De Ronde & Co., C.C.A.Del., 7 F.2d 981, 984.

Also, sometimes, an aggregate of separate debts, or the total sum of the existing claims against a person or company. Thus we speak of the "national debt," the "bonded debt" of a corporation, etc.

The word "debt" has no fixed legal meaning; Electric Reduction Co. v. Lewellyn, C.C.A.Pa., 11 F.2d 493, 494; but takes shades of meaning from the occasion of its use and color from accompanying words; Morrow v, Hayes, 226 Mich. 301, 197 N.W. 554, 555.

The word is of large import, including not only debts by specialty, and debts of record, or judgments (Liberty Mut. Ins. Co. v. Johnson Shipyards Corporation, C.C.A.N.Y., 6 F.2d 752, 755; Schooley v. Schooley, 184 Iowa 835, 169 N. W. 56, 57, 11 A.L.R. 110; Bronson v. Syverson, 88 Wash. 264, 152 P. 1039, 1040, L.R.A.1916B, 993; Rosenberg v. Rosenberg, 152 Md. 49, 135 A. 840), but also obligations arising under simple contract, to a very wide extent; and in its popular sense includes all that is due to a man under any form of obligation or promise. McCrea v. First Nat. Bank, 162 Minn. 455, 203 N.W.290; /Etna Ins. Co. *v.* Robertson, 126 Miss. 387, 88 So. 883, 890.

*Synonyms*

The term "demand" is of much broader import than "debt," and embraces rights of action belonging to the debtor beyond those which could appropriately be called "debts." In this respect the term "demand" is one of very extensive import. In re Denny, 2 Hill, N.Y., 223.

Nevertheless, "debt" may be synonymous with "claim"; In re Littleton's Estate, 223 N.Y.S. 470, 479, 129 Misc. 845; and may include any kind of a just demand. Goldberg v. Parker, 87 Conn. 99, 87 A. 555, 557, 46 L.R.A.,N.S., 1097, Ann.Cas.1914C, 1059.

The word dues is equivalent to "debts," or that which is owing and has a contractual significance. State v. Mortgage Security Co., 154 Minn, 453, 192 N.W. 348, 350.

"Debt" is not exactly synonymous with "duty." A debt is a legal liability 'to pay a specific sum of money; a duty is a legal obligation to perform some act. Allen v. Dickson, Minor, Ala., 120.

"Obligation" is a broader term than "debt." Bovee v. Boyle, 25 Colo.App. 165, 136 P. 467, 469. Every obligation is not a debt, though every debt is an obligation. Lindstrom v. Spicher, 53 N.D. 195, 205 N.W. 231, 233, 41 A.L.R. 968; In re Moorehead's Estate, 289 Pa. 542, 137 A. 802, 806, 52 A.L.R. 1251.

The words "debt" and "liability" are not necessarily synonymous. As applied to the pecuniary relations of parties, liability is a term of broader significance than debt. Coulter Dry Goods Co. v. Wentworth, 171 Cal. 500, 153 P. 939, 940. Liability is 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. McElfresh v. Kirkendall, 36 Iowa 226. "Liability" ordinarily means an obligation which may or may not ripen into a debt. Irving Bank-Columbia Trust Co. v. New York Rys. Co., D.C.N.Y., 292 F. 429, 433. Yet "debt" may sometimes include various kinds of liabilities. See Allen v. Cosmopolitan Trust Co., 247 Mass. 334, 142 N. E. 100, 103; Carroll v. Bowling, 151 Md. 59, 133 A. 851, 854.

## In General

Active debt. One due to a person. Used in the civil law.

Ancestral debt. One of an ancestor which the law compels the heir to pay. Watkins v. Holman, 16 Pet. 25, 10 L.Ed. 873; A. & E. Encyc.

Debt by simple contract. A debt or demand founded upon a verbal or implied contract, or upon any written agreement that is not under seal.

Debt by specialty or special contract. A debt due, or acknowledged to be due, by some deed or instrument under seal; as a deed of covenant or sale, a lease reserving rent, or a bond or obligation. 2 Bl.Comm. 465; In re Harris, 101 N.J.Eq. 5, 137 A. 215, 216; Kerr v. Lydecker, 51 Ohio St. 240. 37 N.E. 267, 23 L.R.A. 842; Marriott v. Thompson, Willes, 189.

Debt ex mutuo. A species of debt or obligation mentioned by Glanville and Bracton, and which arose *ex mutuo,* out of a certain kind of loan. Glan. lib. 10, c. 3; Bract. fol. 99. See Mutuum; Ex Mutuo.

Debt of record. A debt which appears to be due by the evidence of a court of record, as by a judgment or recognizance. 2 B1.Comm. 465.

Doubtful debt. One of which the payment is uncertain. *Clef des Lois Romaines.*

In Practice

The name of a common-law action, which lies to recover a certain specific sum of money, or a sum that can readily be reduced to a certainty. 3 B1.Comm. 154; 3 Steph.Comm. 461; 1 Tidd, Pr. 3; Drennen Motor Car Co. v. Evans, 192 Ala. 150, 68 So. 303; Bullard v. Bell, 1 Mass. 243, Fed.Cas.No. 2,121; U. S. v. Claflin, 97 U.S. 546, 24 L.Ed. 1082; Baum v. Tonkin, 110 Pa. 569, 1 A. 535.

It is thus distinguished from *assumpsit,* which lies as well where the sum due is uncertain as where it is certain, and from *covenant,* which lies only upon contracts evidenced in a certain manner.

It is said to lie in the *debit* and *detinet,* (when it is stated that the defendant owes and detains,) or in the *detinet,* (when it is stated merely that he detains.) Debt in the *detinet* for goods differs from detinue, because it is not essential in this action, as in detinue, that the specific property in the goods should have been vested in the plaintiff at the time the action is brought. Dyer, 24b.

Existing debt. See Existing Debt.

Fraudulent debt. A debt created by fraud. Such a debt implies confidence and deception. It implies that it arose out of a contract, express or implied, and that fraudulent practices were employed by the debtor, by which the creditor was defrauded. Howland v. Carson, 28 Ohio St. 628.

Hypothecary debt. One which is a lien upon an estate.

Judgment debt. See Judgment Debt.

Legal debts. Those that are recoverable in a court of common law, as debt on a bill of exchange, a bond, or a simple contract. Rogers v. Daniell, 8 Allen, Mass., 348; Guild v. Walter, 182 Mass. 225, 65 N.E. 68.

Liquid debt. One which is immediately and unconditionally due.

Mutual debts. Money due on both sides between two persons. *Such* debts must be due to and from same persons in same capacity. Dole v. Chattabriga, 82 N.H. 396, 134 A. 347, 348. Cross debts in the same capacity and right, and of the same kind and quality. Lippitt v. Thames Loan & Trust Co., 88 Conn. 185, 90 A. 369, 374.

Passive debt. A debt upon which, by agreement between the debtor and creditor, no interest is payable, as distinguished from *active* debt; *i. e.,* a debt upon which interest is payable. In this sense, the terms "active" and "passive" are applied to certain debts due from the Spanish government to Great Britain. Wharton. In another sense of the wards, a debt is "active" or "passive" according as the person of the creditor or debtor is regarded; a passive debt being that which a man owes; an active debt that which is owing to him. In this meaning every debt is both active and passive,—active as regards the creditor, passive as regards the debtor.

Privileged debt. One which is to be paid before others in case a debtor is insolvent.

Public debt. That which is due or owing by the government of a state or nation. The terms "public debt" and "public securities," used in legislation, are terms generally applied to national or state obligations and dues, and would rarely, if ever, be construed to include town debts or obligations; nor would the term "public revenue" ordinarily be applied to funds arising from town taxes. Morgan v. Cree, 46 Vt. 773, 14 Am.Rep. 640.

Pure debt. In Scotch law. A debt due now and unconditionally is so called. It is thus distinguished from a *future* debt,—payable at a fixed day in the future,—and a *contingent* debt, which will only become due upon the happening of a certain contingency.

Simple contract debt. One where the contract upon which the obligation arises is neither ascertained by matter of record nor yet by deed or special instrument, but by mere oral evidence the most simple of any, or by notes unsealed, which are capable of a more easy proof, and therefore only better than a verbal promise. 2 Bl.Comm. 466.

Solvent debts. In Pennsylvania, the "solvent debts" which a city may deduct from its gross indebtedness pursuant to Act April 20, 1874, P.L. 65, in ascertaining its borrowing capacity, are debts due it directly, payment of which it can enforce as one of its quick assets for the liquidation of any of its obligations. McGuire v. City of Philadelphia, 245 Pa. 287, 91 A. 622, 623.

Specialty debt. See Debt by Specialty or Special Contract, *supra.*

DEBTEE. A person to whom *a* debt is due; a creditor. 3 Bl.Comm. 18; Plowd. 543. Not used.

DEBTOR. One who owes a debt; he who may be compelled to pay a claim or demand. Anyone liable on a claim, whether due or to become due. Cozart v. Barnes, C.C.A.S.C., 240 F. 935, 938.

The term may be used synonymously with "obligor," "mortgagor," and the like. McDuffle v. Faulk, 214 Ala. 221, 107 So. 61, 62.

Common Debtor

In Scotch law. A debtor whose effects have been arrested by several creditors. In regard to these creditors, he is their common debtor, and by this term is distinguished in the proceedings that take place in the competition. Bell

Debtor's Act 1869

The statute 32 & 33 Vict. c. 62, abolishing imprisonment for debt in England, and for the punishment of fraudulent debtors. 2 Steph.Comm. 159-164. Not to be confounded with the Bankruptcy Act of 1869. Mozley & Whitley.

Debtor's Summons

In English law. A summons issuing from a court having jurisdiction in bankruptcy, upon the creditor proving a liquidated debt of not less than 150, which he has failed to collect after reasonable effort, stating that if the debtor fail, within one week if a trader, and within three weeks if a non-trader, to pay or compound for the sum specified, a petition may be presented against him praying that he may be adjudged a bankrupt. Bankruptcy Act 1869, § 7; Robs.Bankr.; Mozley & Whitley.

DECALOGUE. The ten commandments which, according to Exodus XX, 1-18, were given by God to Moses. The Jews called them the "Ten Words," hence the name.

DECANATUS. A deanery. Spelman. A company of ten persons. Calvin.

Also (and in this sense sometimes spelled Decania, or Decana), a town or tithing, consisting originally of ten families of freeholders. Ten tithings compose a hundred. 1 Bla.Comm. 114; Medley, Orig.Illus.Eng.Const.Hist.

DECANIA. The office, jurisdiction, territory, or command of a *decanus,* or dean. Spelman.

DECANUS.

In Ecclesiastical and Old European Law

An officer having supervision over *ten;* a dean. A term applied not only to ecclesiastical, but to civil and military, officers. *Decanus monasticus;* a monastic dean, or dean of a monastery; an officer over ten monks. *Decanus in majori ecclesice;* dean of a cathedral church, presiding over ten prebendaries. *Decanus episcopi;* a bishop's or rural dean, presiding over ten clerks or parishes. *Decanus friborgi;* dean of a friborg. An officer among the Saxons who presided over a friborg, tithing, decennary, or association of ten inhabitants; otherwise called a "tithing man," or "borsholder," his duties being those of an inferior judicial officer. Du Cange; Spelman, Gloss.; Calvinus, Lex. *Decanus militaris;* a military officer having command of ten soldiers. Spelman.

In Roman Law

An officer having the command of a company or "mess" of ten soldiers. Also an officer at Constantinople having charge of the burial of the dead. Nov.Jus. 43, 59; Du Cange.

DECAPITATION. The act of beheading. A mode of capital punishment by cutting off the head.

DECEASE, n. Death; not including civil death, (see Death.) In re Zeph's Estate, 50 Hun, 523, 3 N.Y.S. 460.

DECEASE, v. To die; to depart life, or from life. This has always been a common term in Scotch law. "Gif ane man *deceasis."* Skene.

DECEASED. A dead person. In re Kite's Estate, 194 Iowa, 129, 187 N.W. 585, 587, 24 A.L.R. 850.

DECEDENT. A deceased person, especially one who has lately died. Etymologically the word denotes a person who is *dying,* but it has come to be used in law as signifying any deceased person, testate or intestate. In re Zeph's Estate, 50 Hun, 523, 3 N.Y.S. 460.

DECEIT. A fraudulent and cheating misrepresentation, artifice, or device, used by one or more persons to deceive and trick another, who is ignorant of the true facts, to the prejudice and damage of the party imposed upon. People v. Chadwick, 143 Cal. 116, 76 P. 884; French v. Vining, 102 Mass. 132, 3 Am.Rep. 440; In re Post, 54 Hun, 634, 7 N.Y.S. 438.

A fraudulent misrepresentation or contrivance, by which one man deceives another, who has no means of detecting the fraud, to the injury and damage of the latter.

A subtle trick or device, whereunto may be referred all manner of craft and collusion used to deceive and defraud another by any means whatsoever, which hath no other or more proper name than *deceit* to distinguish the offense. [West Symb. § 68]; Jacob.

A "deceit" is either : (1) The suggestion, as a fact, of that which is not true, by one who does not believe it to be true; (2) the assertion, as a fact, of that which is not true, by one who *has* no reasonable ground for believing it to be true; (3) the suppression of a fact, by one who is bound to disclose it, or who gives information of other facts which are likely to mislead for want of communication of that fact; or (4) a promise, made without any intention of performing it. Civ.Code Cal. § 1710; Civ.Code S.D. § 1293 (Comp.Laws 1929, § 797).

To constitute "deceit," the statement must be untrue, made with knowledge of its falsity or with reckless and conscious ignorance thereof, especially if parties are not on equal terms, made with intent that plaintiff act thereon or in a manner apparently fitted to induce him to act thereon, - and plaintiff must act in reliance on the statement in the manner contemplated, or manifestly probable, to his injury. Corley Co. v. Griggs, 192 N.C. 171, 134 S.E. 406, 407; Pain *v.* Kiel, C.C.A.Mo., 288 F. 527, 529. See, also, Crossman v. Bacon & Robinson Co., 119 Me. 105, 109 A. 487, 489; Alpine v. Friend Bros., 244 Mass. 164, 138 N. E. 553, 554; Hood v. Wood, 61 Okl. 294, 161 P. 210, 213.

The essential elements of "deceit" are representation, falsity, scienter, deception, and injury. Ochs *v.* Woods, 221 N.Y. 335, 117 N.E. 305, 306.

In Old English Law

The name of an original writ, and the action founded on it, which lay to recover damages for any injury committed *deceitfully,* either in the name of another, (as by bringing an action in another's name, and then suffering a nonsuit, whereby the plaintiff became liable to costs,) or by a fraudulent warranty of goods, or other personal injury committed contrary to good faith and honesty. Reg.Orig. 112-116; Fitzh.Nat.Brev. 95, E, 98.

Also the name of a judicial writ which formerly lay to recover lands which had been lost by default by the tenant in a real action, in consequence

of his not having been summoned by the sheriff, or by the collusion of his attorney. Rosc.Real Act. 136; 3 B1.Comm. 166.

In General

Deceitful plea. A sham plea; one alleging as facts things which are obviously false on the face of the plea. Gray v. Gidiere, 4 Strob., S.C., 443.

DECEM TALES. (Ten such; or ten tales, jurors.) In practice. The name of a writ which issues in England, where, on a trial at bar, *ten* jurors are necessary to make up a full panel, commanding the sheriff to summon the requisite number. 3 B1.Comm. 364; Reg.Jud. 30b; 3 Steph.Comm. 602.

DECEMVIRI LITIBUS JUDICANDIS. Lat. In the Roman law. Ten persons (five senators and five *equites)* who acted as the council or assistants of the praetor, when he decided on matters of law. Hallifax, Civil Law, b. 3, c. 8. According to others, they were themselves judges, appointed by Augustus to act in certain cases. Calvinus, Lex.; Anthon, Rom.Ant.

DECENCY. Propriety of action, speech, dress, etc. Universal Film Mfg. Co. v. Bell, 100 Misc. 281, 167 N.Y.S. 124, 128.

DECENNA. In old English law. A tithing or decennary; the precinct of a frank-pledge; consisting of ten freeholders with their families. *Spelman.*

DECENNARIUS. Lat. One who held one-half a virgate of land. Du Cange. One of the ten freeholders in a *decennary.* Id.; Calvin. *Decennier.* One of the *decennarii,* or ten freeholders making up a tithing. Spelman; Du Cange, *Decenna;* 1 Bla.Comm. 114.

DECENNARY. A tithing, composed of ten neigh. boring families. 1 Reeve, Eng.Law, 13; 1 131. Comm. 114.

King Alfred, for the better preservation of the peace, divided England into counties, the counties into hundreds, and the hundreds into tithings or deceRnaries : the inhabitants whereof, living together, were sureties or pledges for each other's good behavior.

DECEPTION. The act of deceiving; intentional misleading by falsehood spoken or acted. Smith v. State, 13 Ala.App. 399, 69 So. 402, 403.

DECEPTIONE. A writ that lieth properly against him that deceitfully doth anything in the name of another, for one that receiveth damage or hurt thereby. It is either original or judicial. Fitzh. N.B.

Deceptis non decipientibus, jura subveniunt. The laws help persons who are deceived, not those deceiving. Tray. Lat. Max. 149.

DECERN. In Scotch law. To decree. "Decernit and ordainit." 1 How. State Tr. 927. "Decerns." ShaW, 16.

DECESSUS. In the civil and old English law. Death; departure.

Decet tamen principem servare leges quibus ipse servatus est. It behooves, indeed, the prince to keep the laws by which he himself is preserved.

DECIDE. To "decide" includes the power and right to deliberate, to weigh the reasons for and against, to see which preponderate, and to be governed by that preponderance. Darden v. Lines, 2 Fla. 571; In re Milford & M. R. Co., 68 N.H. 570, 36 A. 545.

DECIES TANTUM (Ten times as much). The name of an ancient writ that was used against a juror who had taken a bribe in money for his verdict. The injured party could thus recover ten times the amount of the bribe.

DECIMZE. In ecclesiastical law. Tenths, or tithes. The tenth part of the annual profit of each living, payable formerly to the pope. There were several valuations made of these livings at different times. The *decimce* (tenths) were appropriated to the crown, and a new valuation established, by 26 Hen. VIII., c. 3. 1 Bl.Comm. 284. See Tithes.

Decimw debentur paroche. Tithes are due to the parish priest.

Decimce de decimatis solvi non debent. Tithes are not to be paid from that which is given for tithes.

Decimx de jure divino et canonica institutione pertinent ad personam. Dal. 50. Tithes belong to the parson by divine right and canonical institution.

Decimm non debent solvi, ubi non est annna renovatio; et ex annuatis renovantibus simui semei. Cro. Jac. 42. Tithes ought not to be paid where there is not an annual renovation, and from annual renovations once only.

DECIMATION. The punishing of every tenth soldier by lot, for mutiny or other failure of duty. This was termed *"decimatio legionis"* by the Romans. Sometimes only the twentieth man was punished, *(vicesimatio,)* or the hundredth, *(centesimatio.)*

DECIME. A French coin of the value of the tenth part of a franc, or nearly two cents.

DECINERS. Those that had the oversight and check of ten friburgs for the maintenance of the king's peace. Cunningham.

Decipi quam fallere est tutius. It is safer to be deceived than to deceive. Lofft, 396.

DECISION. A popular rather than technical or legal word; a comprehensive term having no fixed, legal meaning. It may be employed as referring to ministerial acts as well as to those that are judicial or of a judicial character, Palmer Pub. Co. v. Smith, 130 Tex. 346, 109 S.W.2d *158, 159; such* as decision of architects, Independent School Dist. No. 35, St. Louis County, v. A. Hedenberg & Co., 214 Minn. 82, 7 N.W.2d 511, 515; of county commissioners, Houser v. Olmstead, 57 S.D. 41,

230 N.W. 224, 225; or of industrial commission, Rosenquist v. O'Neil & Preston, 187 Minn. 375, 245 N.W. 621.

A judgment or decree pronounced by a court in settlement of a controversy submitted to it and by way of authoritative answer to the questions raised before it. Adams v. Railroad Co., 77 Miss. 194, 24 So. 317, 60 L.R.A. 33; Board of Education v. State, 7 Kan.App. 620, 52 P. 466.

A judgment given by a competent' tribunal. Eastman Kodak Co. v. Richards, 123 Misc. 83, 204 N.Y.S. 246, 248.

The findings of fact and conclusions of law which must be in writing and filed with the clerk. Stewart Mining Co. v. Ontario Mining Co., 23 Idaho, 724, 132 P. 787, 791; Wilcox v. Sway, 69 Cal.App.2d 141, 160 P.2d 154, 156.

A finding, as by a court, upon either a question of law or fact arising in a case. Vermont Marble Co. v. Eastman, 91 Vt. 425, 101 A. 151, 160. The court's finding or findings. Volderauer v. State, 195 Ind. 415, 143 N.E. 674, 676; Chambers v. Farnham, 39 Cal.App. 17, 179 P. 423, 424.

A determination of a judicial or quasi judicial nature. Codington County v. Board of Com'rs of Codington County, 51 S.D. 131, 212 N.W. 626, 628.

Statement by trial justice after trial before court without jury does not constitute "decision." Shaul v. Fidelity & Deposit Co. of Maryland, 131 Misc. 401, 227 N.Y.S. 163, 1.68. A "decision" involves reaching a conclusion. Lambros v. Young, 145 F.2d 341, 343, 79 U.S.App.D.C. 247.

The term is broad enough to cover both final judgments and interlocutory orders. Stout v. Stout, 68 Ind.App. 278, 131 N.E. 245, 246. And though sometimes limited to the sense of judgment; Industrial Commission of Ohio v. Musselli, 102 Ohio St. 10, 130 N.E. 32, 33; the term is at other times understood as meaning simply the first step leading to a judgment; Dorney v. Ives, 36 R.I. 276, 90 A. 164, 165; or as an order for judgment; Collins v. Belland, 37 Cal. App. 139, 173 P. 601, 602. The word may also include various rulings, as well as orders. U. S. v. Thompson, 251 U. S. 407, 40 S.Ct. 289, 291, 64 L.Ed. 333; Marr v. Marr, 194 Cal. 332, 228 P. 534, 535.

The words "decision" and judgment" may be used interchangeably, but in the abstract there is a shade of difference between the two. Smith v. State, 196 Ga. 595, 27 S.E.2d 369, 373.

"Decision" is not necessarily synonymous with "opinion." A decision of the court is its judgment; the opinion is the reasons given for that judgment, or the expression of the views of the judge. Craig v. Bennett, 158 Ind. 9, 62 N.E. 273; But the two words are sometimes used interchangeably. Pierce v. State, 109 Ind. 535, 10 N.E. 302; Keller v. Summers, 262 Mo. 324, 171 S.W. 336, 337.

The French lawyers call the opinions which they give on questions propounded to them, decisions. See Inst. 1, 2, 8; Dig. 1, 2, 2.

DECISIVE, or DECISORY, OATH. See Oath.

DECISION ON MERITS. A decision determining the validity of a written instrument or passing on a controversy with respect to the interpretation thereof which bars subsequent suit on same cause of action. Eulenberg v. Torley's Inc., 56 Cal.App. 2d 653, 133 P.2d 15, 17.

DECLARANT. A person who makes a declaration.

DECLARATION.

In Pleading

The first of the pleadings on the part of the plaintiff in an action at law, being a formal and methodical specification of the facts and circumstances constituting his cause of action. It commonly comprises several sections or divisions, called "counts," and its formal parts follow each other in this order: Title, venue, commencement, cause of action, counts, conclusion. The declaration, at common law, answers to the "libel" in ecclesiastical and admiralty law, the "bill" in equity, the "petition" in civil law, the "complaint" in code pleading, and the "count" in real actions. U. S. v. Ambrose, 108 U.S. 336, 2 S.Ct. 682, 27 L.Ed. 746; Railway Co. v. Nugent, 86 Md. 349, 38 A. 779, 39 L.R.A. 161; Dixon v. Sturgeon, 6 Serg. & R. (Pa.) 28; 1 Chit.Pl. 248; Co.Litt. 17 a, 303 a; Bacon, Abr. *Pleas* (B) ; Comyns, Dig. *Pleader,* C, *7;* Lawes, Pl. 35; Steph.Pl. 36; Leslie v. Mendelson, 302 Mich. 95, 4 N.W.2d 481, 484.

It may be *general* or *special:* for example, in debt on a bond, a declaration counting on the penal part only is *general;* one which sets out both the bond and the condition and assigns the breach is *special;* Gould, Pl. c. 4, § 50.

In Evidence

An unsworn statement or narration of facts made by a party to the transaction, or by one who has an interest in the existence of the facts recounted. Also, similar statements made by a person since deceased, which are admissible in evidence in some cases, contrary to the general rule, *e. g.,* "dying declarations" (see that subtitle, *infra).*

In Practice

The declaration or declaratory part of a judgment, decree, or order is that part which gives the decision or opinion of the court on the question of law in the case. Thus, in an action raising a question as to the construction of a will, the judgment or order declares that, according to the true construction of the will, the plaintiff has become entitled to the residue of the testator's estate, or the like. Sweet.

In Scotch Practice

The statement of a criminal or prisoner, taken before a magistrate. 2 Alis. Crim. Pr. 555; 2 Hume 328; Arkl. Just. 70; Paterson, Comp. §1 952, 970.

In General

A "declaration" is a statement made out of court. Dawson v. Davis, 125 Conn. 330, 5 A.2d 703, 704.

Declaration against interest. Such declarations are evidence of the fact declared, and are therefore distinct from admissions, which amount to a waiver of proof. Jelser v. White, 183 N.C. 126, 110 S.E. 849, 850. They are statements which, when made, conflict with the pecuniary interest of the person making them, who need not have been a party, privy or witness to the suit in which they are offered. Elliotte v. Lavier, 299 Mich. 373, 300 N.W. 116, 118.

Declaration in chief. A declaration for the principal cause of action. 1 Tidd, Pr. 419.

Declaration of dividend. The act of a corporation in setting aside a portion of the net or surplus proceeds for distribution among the stockholders according to their respective interests. First Nat. Bank & Trust Co. v. Glenn, D.C.Ky., 36 F.Supp. 552, 554. See, also, Dividend.

Declaration of homestead. A creature of, and its validity depends upon, compliance with homestead statute. It is merely an act of the owner whereby he avails himself of, and secures, a right or privilege given him by statute; it is neither a conveyance nor a contract, and there is no transfer of, or change in, title, nor any agreement of transfer or change. U. S. Fidelity & Guaranty Co. v, Adloway, 173 Wash. 404, 23 P.2d 408. See, also, Homestead.

Declaration of independence. A formal declaration or announcement, promulgated July 4, 1776, by the congress of the United States of America, in the name and behalf of the people of the colonies, asserting and proclaiming their independence of the British crown, vindicating their pretensions to political autonomy, and anouncing themselves to the world as a free and independent nation.

Declaration of intention. A declaration made by an alien, as a preliminary to naturalization, before a court of record, to the effect that it is his intention in good faith to become a citizen of the United States, and to renounce forever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty whereof at the time he may be a citizen or subject. 8 U.S.C.A. § 731.

Declaration of right. See Bill of Rights.

Declaration of trust. The act by which the person who holds the legal title to property or an estate acknowledges and declares that he holds the same in trust to the use of another person or for certain specified purposes. The name is also used to designate the deed or other writing embodying such a declaration. Griffith v. Maxfield, 66 Ark. 513, 51 *S.W.* 832. See Baker v. Baker, 123 Md. 32, 90 A. 776, 779 (bank deposit) ; Del Giorgio v. Powers, 27 Ca1.App.2d 668, 81 P.2d 1006, 1012 (mining claim) ; Bingen v. First Trust Co. of St. Paul, C.C.A.Minn., 103 F.2d 260, 264 (letter).

Declaration of war. A public and formal proclamation by a nation, through its executive or legislative department, that a state of war exists between itself and another nation, and forbidding all persons to aid or assist the enemy.

An act of Congress is necessary to the commencement of a foreign war and is in itself a "declaration" and fixes the date of the war. West v. Palmetto State Life Ins. Co., 202 S.C. 422, 25 S.E.2d 475, 477, 145 A.L.R. 1461; Rosenau v. Idaho Mut. Ben. Ass'n, 65 Idaho 408, 145 P.2d 227, 230.

Dying declarations. Statements made by a person who is lying at the point of death, and is conscious of his approaching dissolution, in reference to the manner in which he received the injuries of which he is dying, or other immediate cause of his death, and in reference to the person who inflicted such injuries or the connection with such injuries of a person who is charged or suspected of having committed them; which statements are admissible in evidence in a trial for homicide (and occasionally, at least in some jurisdictions, in other cases) where the killing of the declarant is the crime charged to the defendant. Shepard v. U. S., Kan., 290 U.S. 96, 54 S.Ct. 22, 78 L.Ed. 196; See generally Simons v. People, 150 Ill. 66, 36 N.E. 1019; Frier v. State, 92 Fla. 241, 109 So. 334, 335; Lucas v. Commonwealth, 153 Ky. 424, 155 S.W. 721, 722; Edwards v. State, 113 Neb. 698, 204 N.W. 780, 783; People v. Selknes, 309 Ill. 113, 140 N.E. 852, 854. Also Barsch v. Hammond, 110 Colo. 441, 135 P.2d 519, 521 (motorist); Waller v. Commonwealth, 178 Va. 294, 16 S.E.2d 808, 813 (shooting) ; State v. Brown, 209 Minn. 478, 296 N.W. 582, 586 (abortion).

Statements made by deceased while on operating table were inadmissible as "dying declarations" where there was no statement by deceased himself that he knew that death was approaching. People v. Hall, 260 App.Div. 421, 22 N.Y. S.2d 973, 976.

Self-serving declaration. One made by a party in his own interest at some time and place out of court;-not including testimony which he gives as witness at the trial. Brosnan v. Boggs, 101 Or. 472, 198 P. 890, 892.

DECLARATION OF LONDON. A declaration concerning the laws of naval war, agreed upon February 26, 1909, by the powers assembled at the London Naval Conference.

The preamble states that the Declaration was made in view of the desirability of an agreement upon the rules to be applied by the International Prize Court established by the Second Hague Conference. A preliminary provision states that it is agreed that the rules adopted "correspond in substance with the generally recognized principles of international law." The subjects dealt with by the Declaration include Blockade, Contraband, Unneutral Service, Destruction of Neutral Prizes, Transfer to Neutral Flag, Enemy Character, Convoy, Search, and Compensation. Higgins, 538-613.

DECLARATION OF PARIS. The name given to an agreement announcing four important rules of international law effected between the principal European powers at the Congress of Paris in 1856. These rules are: (1) Privateering is and remains abolished; (2) the neutral flag covers enemy's goods, except contraband of war; (3) neutral goods, except contraband of war, are not liable to confiscation under a hostile flag; (4) blockades, to be binding, must be effective.

DECLARATION OF ST. PETERSBURG. A declaration made at St. Petersburg in 1868 on behalf of certain of the powers in relation to the prohibition of the use of explosive bullets in time of war,

DECLARATOR. In Scotch law. An action whereby it is sought to have some right of property, or of *status,* or other right judicially ascertained and declared. Bell.

DECLARATOR OF TRUST. An action resorted to against a trustee who holds property upon titles *ex facie* for his own benefit. Bell

DECLARATORY. Explanatory; designed to fix or elucidate what before was uncertain or doubtful.

DECLARATORY ACTION. In Scotch law. An action in which the right of the pursuer (or plaintiff) is craved to be *declared,* but nothing claimed to be done by the defender (defendant.) Ersk. Inst. 5, 1, 46. Otherwise called an "action of declarator."

DECLARATORY DECREE. In practice. A binding declaration of right in equity without consequential relief.

DECLARATORY JUDGMENT. One which simply declares the rights of the parties or expresses the opinion of the court on a question of law, without ordering anything to be done. Its distinctive characteristics are that no executory process follows as of course, nor is it necessary that an actual wrong, giving rise to action for damages, should have been done, or be immediately threatened. Great Lakes Dredge & Dock Co. v. Huffman, La., 319 U.S. 293, 63 S.Ct. 1070, 87 L.Ed. 1407; Petition of Kariher, 284 Pa. 455, 131 A. 265, 268; Village of Bay v. Gelvick, 58 Ohio App. 51, 15 N.E. 2d 786, 791. It must deal with real dispute of real fact. Rauh v. Fletcher Savings & Trust Co., 207 Ind. 638, 194 N.E. 334, 335. It is distinguished from other actions in that it does not seek execution or performance from the defendant or opposing party. Brindley v. Meara, Ind., 209 Ind. 144, 198 N.E. 301, 101 A.L.R. 682; Gutensohn v. Kansas City Southern Ry. Co., C.C.A.Mo., 140 F. 2d 950.

DECLARATORY PART OF A LAW. That which clearly defines rights to be observed and wrongs to be eschewed.

DECLARATORY STATUTE. One enacted for the purpose of removing doubts or putting an end to conflicting decisions in regard to what the law is in relation to a particular matter. It may either be expressive of the common Iaw, 1 Bl. Comm. 86; Gray v. Bennett, 3 Mete., Mass., 527; In re Ungaro's Will, 88 N.J.Eq, 25, 102 A. 244, 246, or may declare what shall be taken to be the true meaning and intention of a previous statute, though in the latter case such enactments are more commonly called "expository statutes." McMahon v. Maddox, Tex.Civ.App., 297 S.W. 310, 312.

A statute enacted to put an end to a doubt as to what is the common law, or the meaning of another statute, and which declares what it is and ever has been. Nelson v. Sandkamp, 227 Minn. 177, 34 N.W.2d 640, 642, 5 A.L.R.2d 1136.

DECLARE. To make known, manifest, or clear. Lasier v. Wright, 304 Ill. 130, 136 N.E. 545, 552, 28 A.L.R. 674. To signify, to show in any manner either by words or acts. Edwardson v. Gerwien, 41 N.D. 506, 171 N.W. 101, 102. To publish; to utter; to announce clearly some opinion or resolution. Knecht v. Ins. Co., 90 Pa. 121, 35 Am. Rep. 641. As to "declare" a dividend. A. T. Jergins Trust v. Rogan, D.C.Cal., 40 F.Supp. 40, 42. To allege or affirm. State v. Hostetter, Mo.Sup., 222 S.W. 750, 754. To solemnly assert a fact before witnesses, *e. g.,* where a testator *declares* a paper signed by him to be his last will and testament. Lane v. Lane, 95 N.Y. 498.

This also *is* one of the words customarily used in the promise given by *a* person who is *affirmed* as a witness,- "sincerely and truly declare and affirm." Hence, to make a positive and solemn asseveration. Bassett v. Denn, 17 N. J. Law, 433.

With reference to pleadings, it means to draw up, serve, and file a declaration; *e. g.,* a "rule to declare." Also to allege in a declaration as a ground or cause of action; as "he declares upon a promissory note."

DECLINATION. In Scotch law. A plea to the jurisdiction, on the ground that the judge is interested in the suit.

DECLINATOIRES. In French law. Pleas to the jurisdiction of the court; also of *lis pendens,* and of *connexite, (q. v.).*

DECLINATORY EXCEPTIONS are such dilatory exceptions as merely decline the jurisdiction of the judge before whom the action *is* brought.. Code Proc. La. 334. A plea to the jurisdiction rationae personae. Diamond T. Motor Trucks V. Heck, La.App., 13 So.2d 512, 514.

DECLINATORY PLEA. In English practice. The plea of sanctuary, or of benefit of clergy, before trial or conviction. 2 Hale, P.C. 236; 4 Bl, Comm. 333. Now abolished. 6 & 7 Geo. IV, c. 28, § 6; Mozl. & W. Diet.; 4 Steph. Comm. 400, note; Id. 436, note.

DECLINATURE. In Scotch practice, An objec, tion to the jurisdiction of a judge. Bell.

DECLINE. A failing process, a tendency to a worse state; to become gradually impaired; a, falling off or downward tendency. Exum v. Laub, C.C.A.Tex., 87 F.2d 73, 74; Buffalo County v. Phelps County, 129 Neb. 268, 261 N.W. 360.

DECOCTION. The act of boiling a substance in water, for extracting its virtues. The operation of boiling certain ingredients in a fluid for the purpose of extracting the parts soluble at that temperature. Also the liquor in which a substance has been boiled; water impregnated with the principles of any animal or vegetable substance boiled in it. Webster; Sykes v. Magone, C.C.N.Y., 38 F. 497.

In an indictment "decoction" and "Infusion" are *ejusdem. generic;* and if one is alleged to have been administered, instead of the other, the variance is immaterial. 3 Camp. 74.

DECOCTOR. In the Roman law. A bankrupt; a spendthrift; a squanderer of public funds. Calvin.

DECOLLATIO. In old English and Scotch law. Decollation; the punishment of beheading. Fleta, lib. 1, c. 21, § 6.

DECOMPOSED. A state of decomposition. United States v. 1851 Cartons, More or Less, etc., D.C.Colo., 55 F.Supp. 343, 346; A. 0. Anderson & Co. v. U. S., C.C.A.Wash., 284 F. 542, 544. A separation into components; specifically, decay or dissolution. In re Vetter, Cust. & Pat.App., 96 F.2d 999, 1000.

DECONFES. In French law. A name formerly given to those persons who died without confession, whether they refused to confess or whether they were criminals to whom the sacrament was refused. *Droit de -Canon,* per M. l'Abbe Andre; Dupin, Gloss. to Loisel's Institutes.

DECORATE. To beautify. To do something, as to a house as such, to improve the condition of the house, or of a room. Grasell v. Brodhead, 175 App.Div. 874, 162 N.Y.S. 421, 423. The addition of something becoming or beautiful. Upsal Street Realty Co. v. Rubin, 326 Pa. 327, 192 A. 481, 483.

DECORATOR. One whose business is the decoration of dwellings or public edifices. Grasell v. Brodhead, 175 App.Div. 874, 162 N.Y.S. 421, 423.

DECOY. To inveigle, entice, tempt, or lure; as, to decoy a person within the jurisdiction of a court so that he may be served with process, or to decoy a fugitive criminal to a place where he may be arrested without extradition papers, or to decoy one away from his place of residence for the purpose of kidnapping him and as a part of that act. In all these uses, the word implies enticement or luring by means of some fraud, trick, or temptation, but excludes the idea of force. Eberling v. State, 136 Ind. 117, 35 N.E. 1023; John v. State, 44 P. 51, 6 Wyo. 203.

Also, a "decoy pond." See that title, *infra.*

DECOY LETTER. A letter prepared and mailed for the purpose of detecting a criminal, particularly one who is perpetrating frauds upon the postal or revenue laws. U. S. v. Whittier, 5 Dill. 39, Fed, Cas. No. 16,688.

DECOY POND. A pond used for the breeding and maintenance of water-fowl. Keeble v. Hickeringshall, 3 Salk. 10; 11 Mod. 74, 130; Holt 14; 11 East 571.

DECREE,

In Practice

The judgment of a court of equity or admiralty, answering for most purposes to the judgment of a court of common law. A decree in equity is a sentence or order of the court, pronounced on hearing and understanding all the points in issue, and determining the rights of all the parties to the suit, according to equity and good conscience. 2 Daniell, Ch.Pr. 986; Wooster v. Handy, C.C.N.Y., 23 F. 49, 56; Motion Picture Patents Co. v. Universal Film Mfg. Co., D.C., N.Y., 232 F. 263, 265; Bull v. International Power Co., 84 N.J.Eq. 209, 93 A. 86, 88; Alford v. Leonard, 88 Fla. 532, 102 So. 885, 890. It is a declaration of the court announcing the legal consequences of the facts found. Robertson v. Talmadge, Tex.Civ.App., 174 S.W. 627, 629.

A decree, as distinguished from an order, is final, and is made at the hearing of the cause, whereas an order is interlocutory, and is made on motion or petition. Wherever an order may, in a certain event resulting from the direction contained in the order, lead to the termination of the suit in like manner as a decree made at the hearing, it is called a "decretal order." Brown.

A judgment at law, as distinguished from a decree in equity, was either simply for the plaintiff or for the defendant. There could be no qualifications or modifications. But such a judgment does not always touch the true justice of the cause or put the parties in the position they ought to occupy. This result was attained by the *decree* of a court of equity which could be so moulded, or the execution of which could be so controlled and suspended, that the relative duties and rights of the parties could be secured and enforced. Bisph.Eq. § 7.

The words "judgment" and "decree," however, are often used synonymously; Finnell v. Finnell, 113 Okl. 269, 230 P. 912, 913; especially now that the Codes have abolished the distinction between law and equity; Henderson v. Arkansas, 71 Okl. 253, 176 P. 751, 753. But of the two terms, "judgment" is the more • comprehensive, and includes "decree." Coleman v. Los Angeles County, 180 Cal. 714, 182 P. 440, 441.

Decision of an administrative board though based on facts adduced on a hearing, Dal Maso v. Board of Com'rs of Prince George's County, 182 Md. 200, 34 A.2d 464, 466, or rescript from reviewing court are not decrees. City of Boston v. Santosuosso, 308 Mass. 189, 31 N.E.2d 564, 568.

Classification

Decrees in equity are either *final* or *interlocutory.* A final decree is one which fully and finally disposes of the whole litigation, determining all questions raised by the case, and leaving nothing that requires further judicial action. Sawyer v. White, 125 Me. 206, 132 A. 421, 422; Draper Corporation v. Stafford Co., C.C.A.Mass., 255 F. 554, 555; Burgin v. Sugg, 210 Ala. 142, 97 So. 216, 2177 An interlocutory decree is a provisional or preliminary decree, which is not final and does not determine the suit, but directs some further proceedings preparatory to the final decree. It is a decree pronounced for the purpose of ascertaining matter of law or fact preparatory to a final decree. 1 Barb. Ch. Pr. 326, 327; Wooster v. Handy, C.C. N.Y., 23 F. 49, 56; Beebe v. Russell, 19 How. 283, 15 L.Ed. 668; Cornely v. Marckwald, 131 U.S. 159, 9 S.Ct. 744, 33 L.Ed. 117. Where something more than the ministerial execution of the decree as rendered is left to be clone, the decree is interlocutory, and not final, even though it settles the equities of the bill. Lodge v. Twell, 135 U.S. 232, 10 S.Ct. 745, 34 L.Ed. 153.. The difficulty of exact definition is mentioned in McGourkey v. Ry. Co., 146 U.S. 536, 13 S.Ct. 170, 36 L.Ed. 1079. See, also, Keystone Manganese & Iron Co. v. Martin, 132 U. S. 91, 10 S.Ct. 32, 33 L.Ed. 275; Leyhe v. McNamara, Tex.Com.App., 243 S.W. 1074, 1076.

In French Law

Certain acts of the Legislature or of the sovereign which have the force of law are called *"decrees";* as the Berlin and Milan decrees.

In Scotch Law

A final judgment or sentence of court by which the question at issue between the parties *is* decided.

In General

Consent decree. One entered by consent of the parties; it is not properly a judicial sentence, but is in the nature of a solemn contract or agreement of the parties, made under the sanction of the court, and in effect an admission by them that the decree is a just determination of their rights upon the real facts of the case, if such facts had been proved. Allen v. Richardson, 9 Rich.Eq., S.C., 53; Schmidt v. Mining Co., 28 Or. 9, 40 P. 1014, 52 Am. St.Rep. 759; Hodgson v. Vroom, C.C.A.N.Y., 266 F. 267, 268; Barnes v. American Fertilizer Co., 144 Va. 692, 130 S.E. 902, 911. It binds only the consenting parties; Myllius v. Smith, 53 W.Va. 173, 44 S.E. 542; and is not binding upon the court; Ex parte Loung June, D.C.N.Y., 160 F. 251, 259. Parties thereto must be competent to contract. Consaer v. Wisniewski, 293 Ill.App. 529, 13 N.E.2d 93, 94.

Decree dative. In Scotch law. An order of a probate court appointing an administrator.

Decree nisi. A provisional decree, which will be made absolute on motion unless cause be shown against it. In English practice, it is the order made by the court for divorce, on satisfactory proof being given in support of a petition for dissolution of marriage; it remains imperfect for at least six months, (which period may be shortened by the court down to three,) and then, unless sufficient cause be shown, it is made absolute on motion, and the dissolution takes effect, subject to appeal. Wharton. It effects a conditional divorce, becoming absolute only upon the happening of a prescribed contingency. Grant v. Grant, 84 N.J.Eq. 81, 92 A. 791, 793.

Decree of constitution. In Scotch practice. A decree by which a debt is ascertained. Bell. In technical language, a decree which is requisite to found a title in the person of the creditor, whether that necessity arises from the death of the debtor or of the creditor. Id.

Decree of distribution. An instrument by which heirs receive property of a deceased; it is a final determination of the parties to a proceeding. Fischer v. Dolwig, 29 N.D. 561, 151 N:W. 431, 432; In re Bradford's Estate, 128 N.J.Eq. 372, 16 A.2d 268, 270.

Decree of forthcoming. In Scotch law. A decree made after an arrestment *(q.* v.) ordering the debt to be paid or the effects of the debtor to be delivered to the arresting creditor. Bell.

Decree of insolvency. One entered in a probate court, declaring the estate in question to be insolvent, that is, that the assets are not sufficient to pay the debts in full. Bush v. Coleman, 121 Ala. 548, 25 So. 569; Walker v. Newton, 85 Me. 458, 27 A. 347.

Decree of locality. In Scotch law. The decree of a teind court allocating stipend upon different heritors. It is equivalent to the apportionment of a tithe rent-charge.

Decree of modification. In Scotch law. A decree of the teind court modifying or fixing a stipend.

Decree of nullity. One entered in a suit for the annulment of a marriage, and adjudging the marriage to have been null and void ab initio. See Nullity.

Decree of registration. In Scotch law. A proceeding giving immediate execution to the creditor; similar to a warrant of attorney to confess judgment.

Decree pro confesso. One entered in a court of equity in favor of the complainant where the defendant has made no answer to the bill and its allegations are consequently taken "as confessed." Ohio Cent. R. Co. v. Central Trust Co., 133 U.S. 83, 10 S.Ct. 235, 33 L.Ed. 561; Equity Rules 16, 17, see Fed.Rules Civ.Proc. rules 6, 55, 28 U.S.C.A.; Freem. Judg. § 11; 1 Dan.Ch.Pr. 5th Am. ed. 517, n. It is merely an admission of the allegations of the bill well pleaded. Remington v. Barney, 35 R.I. 267, 86 A. 891, 892; Majure v. Johnson, 192 Miss. 810, 7 So.2d 545, 549.

Deficiency decree. In a mortgage foreclosure suit, a decree for the balance of the indebtedness after applying the proceeds of a sale of the mortgaged property to such indebtedness. Commercial Bank of Ocala v. First Nat. Bank, 80 Fla. 685, 87 So. 315, 316.

For "Execution of decree," see Execution of Judgment or Decree.

DECREET. In Scotch law. The final judgment or sentence of a court.

DECREET ABSOLVITOR. A decree dismissing a claim, or acquitting a defendant. 2 Kames, Eq. 367.

DECREET ARBITRAL. An award of arbitrators. 1 Kames, Eq. 312, 313; 2 Kames, Eq. 367.

DECREET COGNITION'S CAUSA. When a creditor brings his action against the heir of his debtor in order to constitute the debt against him and attach the lands, and the heir appears and renounces the succession, the court then pronounces *a* decree *cognitionis causd.* Bell.

DECREET CONDEMNATOR. One where the decision is in favor of the plaintiff. Ersk.Inst. 4, 3, 5.

DECREET OF VALUATION OF TEINDS. A sentence of the court of sessions, (who are now in the place of the commissioners for the valuation of teinds,) determining the extent and value of teinds. Bell.

DECREMENTUM MARIS. Lat. In old English law. Decrease of the sea; the receding of the sea from the land. Callis, Sewers, (53,) 65. See Reliction.

DECREPIT. This term designates a person who is disabled, incapable, or incompetent, either from

physical or mental weakness or defects, whether produced by age or other causes, to such an extent as to render the individual comparatively helpless in a personal conflict with one possessed of ordinary health and strength. Hall v. State, 16 Tex.App. 11, 49 Am.Rep. 824; Lutz v. State, 147 Tex.Cr.R. 236, 179 S.W.2d 979, 980. The term includes a blind man. Lewing v. State, 135 Tex.Cr. R. 485, 121 S.W.2d 599, 600.

DECRETA. In the Roman law. Judicial sentences given by the emperor as supreme judge.

Decreta conciliorum non ligant reges nostros. Moore, 906. The decrees of councils bind not our kings.

DECRETAL. The granting or denying of remedy sought. State v. Reagan County Purchasing Co., Tex.Civ.App., 186 S.W.2d 128, 134.

DECRETAL ORDER. A preliminary order that determines no question upon the merits and establishes no right. Electrical Research Products v. Vitaphone Corporation, 20 Del.Ch. 417, 171 A. 738.

DECRETALES BONIFACH OCTAVI. A supplemental collection of the canon law, published by Boniface VIII. in 1298, called, also, *"Liber Sextus Decretalium,"* (Sixth Book of the Decretals.)

DECRETALES GREGORII NONI. The decretals of Gregory the Ninth. A collection of the laws of the church, published by order of Gregory IX. in 1227. It is composed of five books, subdivided into titles, and each title is divided into chapters. They are cited by using an X, (or *extra;)* thus "Cap. 8 X *de Regulis Juris," etc.*

DECRETALS. In ecclesiastical law. Letters of the pope, written at the suit or instance of one or more persons, determining some point or question in ecclesiastical law, and possessing the force of law, within the Roman Catholic Church. The decretals form the second part of the body of canon law.

This is also the title of the second of the two great divisions of the canon law, the first being called the *"Decree,"* (decretum.)

DECRETO. In Spanish colonial law. An order emanating from some superior tribunal, promulgated in the name and by the authority of the sovereign, in relation to ecclesiastical matters. Schm.Civil Law, 93, note.

DECRETUM.

In the Civil Law

A species of imperial constitution, being a judgment or sentence given by the emperor upon hearing of a cause (quod *imperator cognoscens decrevit).* Inst. 1, 2, 6.

In Canon Law

An ecclesiastical law, in contradistinction to a secular law, *(lex.)* 1 Mackeld.Civil Law, p. 81, § 93, (Kaufmann's note.)

DECRETUM GRATIANI. Gratian's decree, or *decretum.* A collection of ecclesiastical law in three books or parts, made in the year 1151, by Gratian, a Benedictine monk of Bologna, being the oldest as well as the first in order of the collections which together form the body of the Roman canon law. 1 Bl.Comm. 82; 1 Reeve, Eng. Law, 67.

DECROWNING. The act of depriving of a crown.

DECRY. To cry down; to deprive of credit. "The king may at any time *decry* or cry down any coin of the kingdom, and make it no longer current." 1 Bl.Comm. 278.

DECURIO. Lat. A decurion. In the provincial administration of the Roman empire, the decurions were the chief men or official personages of the large towns. Taken as a body, the decurions of a city were charged with the entire control and administration of its internal affairs; having powers both magisterial and legislative. See 1 Spence, Eq.Jur. 54.

DEDBANA. In Saxon law. An actual homicide or manslaughter.

DEDI. (Lat. I have given.) A word used in deeds and other instruments of conveyance when such instruments were made in Latin, and anciently held to imply a warranty of title. Deakins v. Hollis, 7 Gill & J., Md., 315.

DEDI ET CONCESSI. I have given and granted. The operative words of conveyance in ancient charters of feoffment, and deeds of gift and grant; the English *"given and granted"* being still the most proper, though not the essential, words by which such conveyances are made. 2 Bl.Comm. 53, 316, 317; 1 Steph.Comm. 164, 177, 473, 474.

DEDICATE. To appropriate and set apart one's private property to some public use; as to make a private way public by acts evincing an intention to do so.

DEDICATION. In real property law. An appropriation of land to some public use, made by the owner, and accepted for such use by or on behalf of the public. Harris v. City of St. Helens, 72 Or. 377, 143 P. 941, 943, Ann.Cas.1916D, 1073. A deliberate appropriation of land by its owner for any general and public uses, reserving to himself no other rights than such as are compatible with the full exercise and enjoyment of the public uses to which the property has been devoted. Longley v. City of Worcester, 304 Mass. 580, 24 N. E.2d 533, 537; Consolidated Realty Co. v. Richmond Hotel & Building Co., 253 *Ky.* 463, 69 S.W.2d 985. See Alden Coal Co. v. Challis, 200 Ill. 222, 65 N.E. 665 (streets in company owned village) ; Du Pont v. Miller, 310 Ill. 140, 141 N.E. 423, 425 (artificial waterway) ; Western Union Telegraph Co. v. Georgia R. & Banking Co., D.C.Ga., 227 F. 276, 285 (right of way for telegraph lines) ; Manning v. House, 211 Ala. 570, 100 So. 772, 774; Mebane v. City of Wynne, 127 Ark. 364, 192 S.W. 221,

222. (Streets on platted land) ; Johnston v. Medina Improvement Club, 10 Wash.2d 44, 116 P.2d 272, 277, (park and recreation purposes).

By Adverse User

A dedication may arise from an adverse exclusive use by the public under a claim of right with the knowledge, actual or imputed, and acquiescence of the owner. Carpenter v. City of St. Joseph, 263 Mo. 705, 174 S.W. 53, 56; Dickinson v. Ruble, 211 Minn. 373, 1 N.W.2d 373, 374, 375; Clark v. State, 25 Ala.App. 467, 140 So. 178, 179.

Tax Revenues

Statute dedicating certain tax revenues to hospital to be remitted directly from Secretary of State made a "dedication" rather than an "appropriation." State ex rel. Porterie v. Charity Hospital of Louisiana at New Orleans, 182 La. 268, 161 So. 606.

Express Common-Law Dedication

An "express common-law dedication" is one where the intent is expressly manifested, such as by ordinary deeds, recorded plats not executed pursuant to statute or defectively certified so as not to constitute a statutory dedication. Board of Com'rs of Garfield County v. Anderson, 167 Okl. 253, 29 P.2d 75, 78.

Express or Implied

A dedication may be express, as where the intention to dedicate is expressly manifested by a deed or an explicit oral or written declaration of the owner, or some other explicit manifestation of his purpose to devote the land to the public use. An implied dedication may be shown by some act or course of conduct on the part of the owner from which a reasonable inference of intent may be drawn, or which is inconsistent with any other theory than that he intended a dedication. Hurley v. West St. Paul, 83 Minn. 401, 86 N.W. 427; Porter v. City of Stuttgart, 135 Ark. 48, 204 S.W. 607, 608; H. A. Hilmer Co. v. Behr, 264 Ill. 568, 106 N.E. 481, 486; Village of Benld v. Dorsey, 311 Ill. 192, 142 N.E. 563, 565; Illinois Cent. R. Co. v. Bennett, C.C.A.Miss., 296 F. 436, 437; City of Brownsville v. West, Tex.Civ.App., 149 S.W.2d 1034, 1037, 1038.

Common-Law or Statutory

A common-law dedication is one made as above described, and may be either express or implied. A statutory dedication is one made under and in conformity with the provisions of a statute regulating the subject, and is of course necessarily express. Poindexter v. Schaffner, Tex.Civ.App., 162 S.W. 22, 23; Kaufman v. City of Butte, 48 Mont. 400, 138 P. 770, 771; Neill v. City of Glendale, 106 Cal.App. 553, 289 P. 877, 879.

Where complete statutory dedication does not exist, sale of lots by reference to plat constitutes common-law "dedication." Byam v. Kansas City Public Service Co., 328 Mo. 813, 41 S.W.2d 945, 949.

In Copyright Law

The first publication of a work, without having secured a copyright, is a dedication of it to the public; that having been done, any one may republish it. Bartlett v. Crittenden, 5 McLean, 32, Fed.Cas.No.1,076; Deward & Rich v. Bristol Savings & Loan Corporation, C.C.A.Va., 120 F.2d 537, 540 (partial publication).

Where copyrighted lectures were not delivered to the general public, but only to paying audiences and classes, they were not abandoned or dedicated to the public. National Institute for Improvement of Memory v. Nutt, D.C. Conn., 28 F.2d 132, 134.

DEDICATION-DAY. The feast of dedication of churches, or rather the feast day of the saint and patron of a church, which was celebrated not only by the inhabitants of the place, but by those of all the neighboring villages, who usually came thither; and such assemblies were allowed as lawful. It was usual for the people to feast and to drink on those days. Cowell.

DEDIMUS ET CONCESSIMUS: (Lat. We have given and granted.) Words used by the king, or where there were more grantors than one, instead of *dedi et concessi.*

DEDIMUS POTESTATEM. (We have given power.) In English practice. A writ or commission issuing out of chancery, empowering the persons named therein to perform certain acts, as to administer oaths to defendants in chancery and take their answers, to administer oaths of office to justices of the peace, etc. 3 Bl.Comm. 447. It was anciently allowed for many purposes not now in use, as to make an attorney, to take the acknowledgment of a fine, etc.

In the United States, a commission to take testimony is sometimes termed a *"dedimus potestatem."* Buddicum v. Kirk, 3 Cranch, 293, 2 L.Ed. 444; Sergeant's Lessee v. Biddle, 4 Wheat. 508, 4 L.Ed. 627.

DEDIMUS POTESTATEM DE ATTORNO FACIENDO. In old English practice. A writ, issued by royal authority, empowering an attorney to appear for a defendant. Prior to the statute of Westminster 2, a party could not appear in court by attorney without this writ.

DEDITION. The act of yielding up anything; surrender.

DEDITITII. In Roman law. Criminals who had been marked in the face or on the body with fire or an iron, so that the mark could not be erased, and subsequently manumitted. Calvin.

DEDUCTIBLE. That which may be taken away or subtracted; an item which may be subtracted from income for tax purposes, such as a deductible debt. In re Hermann's Estate, 349 Pa. 230, 36 A.2d 804, 806; a deductible expense. Pacific Southwest Realty Co. v. McColgan, 53 Cal.App. 2d 549, 128 P.2d 86, 87, or; a deductible loss. Helvering v. Gordon, C.C.A.4, 134 F.2d 685, 689; Bickerstaff v. Commissioner of Internal Revenue, C.C. A.Ga., 128 F.2d 366, 367.

DEDUCTION. That which *is* deducted; the part taken away; abatement; as a deduction from the yearly rent. Don Lee, Inc., v. United States, D.C. Cal., 42 F.Supp. 884, 885; Pittsburgh Brewing Co. v. Commissioner of Internal Revenue, C.C.A.3, 107 F.2d 155, 156.

In Probate Law

By "deduction" is understood a portion or thing which an heir has a right to take from the mass of the succession before any partition takes place. Civil Code La. art. 1358.

Taxation

As used in Internal Revenue Code, relating to tax on corporations, "deduction" refers to items which may be subtracted from a corporation's gross income in arriving at net income. McKesson & Robbins v. Walsh, 130 Conn. 460, 35 A.2d 865.

An amount refunded by corporation to federal government under Renegotiation Act *as* excess profits from war contracts is not a "deduction" from corporation's gross income subject to state taxation, but must be considered in determining corporation's true gross income. Southern Weaving Co. *v.* Query, 206 S.C. 307, 34 S.E.2d 51, 54.

Trial

Argument of counsel based on the evidence is not improper as unsworn testimony, but is warranted as a "deduction" from the testimony. Texas & P. R. Co. v. Smith, Tex.Civ.App., 115 S. W.2d 1238, 1242.

DEDUCTION FOR NEW. In marine insurance. An allowance or drawback credited to the insurers on the cost of repairing a vessel for damage arising from the perils of the sea insured against. This allowance is usually one-third, and is made on the theory that the parts restored with new materials are better, in that proportion than they were before the damage.

DEED. A conveyance of realty, a writing signed by grantor, whereby title . to realty is transferred from one to another. National Fire Ins. Co. v. Patterson, 170 Okl. 593, 41 P.2d 645, 647; Mitchell v. Nicholson, 71 N.D. 521, 3 N.W.2d 83, 85, 139 A.L.R. 1175.

In order that an instrument may be operative as a "deed," it must pass a present interest, although it is not necessary that grantee take a present estate in property conveyed. Blair v. Blair, 111 Vt. 53, 10 A.2d 188, 189.

The term is also used as synonymous with "fact," "actuality," or "act of parties." Thus a thing "in deed" is one that has been really or expressly done; as opposed to "in law," which means that it is merely implied or presumed to have been done. Powell v. Powell, 196 Ga. 694, 27 S.E.2d 393, 396, 397.

At Common Law

At common law, a sealed instrument, containing a contract or covenant, delivered by the party to be bound thereby, and accepted by the party to whom the contract or covenant runs. Co. Litt. 171; 2 Bl.Comm. 295; Shepp. Touchst. 50. A writing containing a contract sealed and delivered. 3 Washb. Real Prop. 239; Sanders v. Riedinger, 30 App.Div, 277, 284, 51 N.Y.S. 937, 942. An instrument in writing, upon paper or parchment, between parties able to contract, subscribed, sealed, and delivered. 4 Kent, Comm. 452; Interstate R. Co. v. Roberts, 127 Va. 688, 105 S.E. 463, 464. There is authority, however, that signing is unnecessary to validity of deed. Bowling v. Wilkerson, D.C.Ky., 19 F.Supp. 584, 587.

A writing under seal by which lands, tenements, or hereditaments are conveyed for an estate not less than freehold. 2 Bl.Comm, 294.

A dded implies, at common law, a sealed instrument. 2 Bl.Comm. 295; Rondot v. Rogers Tp., 39 C.C.A. 462, 99 F. 202, 209; Strain v. Fitzgerald, 128 N.C. 396, 38 S.E. 929, 930; Williams v. State, 25 Fla. 734, 6 So. 831, 832, 6 L.R.A. 821; *e. g., a* bond is a deed for the reason that it is sealed by the obligor. In re Contest of Election of Burns, 315 Pa. 23, 171 A. 888, 889. But the term Is also applied to similar instruments, not under seal, executed in jurisdictions in which the use of seals is unknown (see Steigenberger v. Carr, 3 M. & G., 191, 199, 42 ECL 107, 133 Reprint. 1111), or in which seals have been rendered unnecessary by statute. See Henderson v. Howard, 147 Ga. 371, 94 S.E. 251; Gibbs v. McGuire, 70 Miss. 646, 12 So. 829.

Modern Rule

A written instrument, signed, sealed, and delivered, by which one person conveys land, tenements, or hereditaments to another. This is its ordinary modern meaning, at least in those jurisdictions which adhere to the common-law rule making a seal essential to the validity and operative effect of a deed of conveyance. McMee v Henry, 163 Ky. 729, 174 S.W. 746, 747; Dunham v. Marsh, 52 N.J.Eq. 256, 30 A. 473, 474; Hood v. Fletcher, 31 Ariz. 456, 254 P. 223, 224.

The term may include a mortgage of real estate. Lockridge v. McCommon, 90 Tex. 234, 38 S.W. 33, 35 (citing Hellman v. Howard, 44 Cal. 110) ; Daly v. Minnesota Loan. & Investment Co., 43 Minn. 517, 45 N.W. 1100, 1101; Morgan v. Wickliffe, 115 Ky. 226, 72 S. W. 1122. But, contra, see Eaton v. White, 18 Wis. 517, 519; National Bank of Columbus v. Tennessee Coal, Iron & Railroad Co., 62 Ohio St. 564, 57 N.E. 450. Similarly a lease for years under seal may be a deed. Hutchinson v. Bramhall, 42 N.J.Eq. 372, 7 A. 873, 875. And a lease exceeding twenty-one years is held to be within the term. St. Vincent's Roman Catholic Congregation of Plymouth v. Kingston Coal Co., 221 Pa. 349, 70 A. 838, 839. But a stipulation for a deed prohibiting drilling for oil or gas was held not to include a lease. Test Oil Co. v. La Tourette, 19 Old. 214, 91 P. 1025, 1029.

The essential difference between a "deed" and a "will" is that the former passes a present interest and the latter passes no interest until after the death of the maker. Willis v. Fiveash, Tex.Civ.App., 297 S.W. 509, 510; Harber v. Harber, 152 Ga. 98, 108 S.E. 526; Henderson v. Henderson, 210 Ala. 73, 97 So. 353, 372; Bowdoin College v. Merritt, C.C.Cal., 75 F. 480, 483. A will is "an instrument by which a person makes a disposition of his property to take effect after his decease, which is in its own nature ambulatory and revocable thir`ing his life. It is this ambulatory quality which form's the characteristic of wills; for, though, a disposition by deed may postpone the possession or enjoyment, or even the vesting, until the death of the disposing party, yet the postponement is in such case produced by the express terms, and does not result from the nature of the instrument." In re Hall's Estate, 149 Cal. 143, 84 P. 839, 840; Robb v. Washington & Jefferson College, 185 N.Y. 485, 78 N.E. 359, 361 (quoting and adopting definition in Jarman, Wills, p. 17). The main test, however, whether *a* writing is *a* will or deed, *is* the animus

testandi. Belgrade v. Carter, Tex.Civ.App., 146 S.W. 964, 965; McLain v. Garrison, 39 Tex.Civ.App. 431, 88 S.W. 484, 89 S.W. 284 (citing Gillham v. Mustin, 42 Ala. 366; Trawick v. Davis, 85 Ala. 345, 5 So. 83) ; Ecklar's Adm'r v. Robinson, 96 S. W. 845, 846, 29 Ky.Law Rep. 1038. Harber v. Harber, 152 Ga. 98, 108 S.E. 520. "Deeds" are irrevocable and take effect by delivery, while "wills" are always revocable during testamentary capacity and take effect only after testator's death. Self v. Self, 212 Ala. 512, 103 So. 591, 592. If a document cannot be revoked or impaired by the grantor, it is a "deed," but if the grantor recites an unqualified power of revocation, it is a "will." Craft v. Moon, 201 Ala. 11, 75 So. 302, 303. An instrument purporting to convey title to lands on its delivery is a deed and not a will, though possession be deferred until the grantor's death. Lovenskoild v. Casas, Tex.Civ.App., 196 S.W. 629, 631.

A deed is distinguished from a contract in that a deed is a mere transfer of title to realty, and is the act of but one of the parties, made pursuant to a previous contract either in parol or in writing. Collins v. Lyon, Inc., 181 Va. 230, 24 S.E.2d 572, 579. Accordingly; want of consideration of itself will not warrant setting aside a deed, though want of consideration would be good defense to an executory contract. Lawson v. Boo, 227 Iowa 100, 287 N.W. 282, 284. However, a deed is a contract, for the purpose of reformation in equity to make it truly speak the legally ascertained intention of the parties. Sawyer Coal & Ice Co. v. Kinnett-Odom Co., 192 Ga. 166, 14 S.E.2d 879, 883.

Deed for a nominal sum. In effect the same as a deed of gift. Bertelsen v. Bertelson, 49 Cal.App. 2d 479, 122 P.2d 130, 133.

Deed in fee. A deed conveying the title to land in fee simple with the usual covenants. Rudd v. Savelli, 44 Ark. 152; Moody v. Spokane & U. H. St. Ry. Co., 5 Wash. 699, 32 P. 751.

Deed indented, or indenture. In conveyancing. A deed executed or purporting to be executed in parts, between two or more parties, and distinguished by having the edge of the paper or parchment on which it is written indented or cut at the top in a particular manner. This was formerly done at the top or side, in a line resembling the teeth of a saw; a formality derived from the ancient practice of dividing chirographs; but the cutting is now made either in a waving line, or more commonly by notching or nicking the paper at the edge. 2 Bl.Comm. 295, 296; Litt. § 370; Smith, Cont. 12.

Deed of covenant. Covenants are sometimes entered into by a separate deed, for title, or for the indemnity of a purchaser or mortgagee, or for the production of title-deeds. A covenant with a penalty is sometimes taken for the payment of a debt, instead of a bond with a condition, but the legal remedy is the same in either case.

Deed of gift. A deed executed and delivered without consideration.

Thus a conveyance to church mission board for which board agreed to educate a relative of grantors for the ministry should grantors die before his education was completed, was not a strict "deed of gift". Forbes v. Board of Missions of M. E. Church, South, 17 Ca1.2d 332, 110 P.2d 3, 7.

Deed of release. One releasing property from the incumbrance of a mortgage or similar pledge upon payment or performance of the conditions; more specifically, where a deed of trust to one or more trustees has been executed, pledging real property for the payment of a debt or the performance of other conditions, substantially as in the case of a mortgage, a deed of release is the conveyance executed by the trustees, after payment or performance, for the purpose of divesting themselves of the legal title and revesting it in the original owner. See Swain v. McMillan, 30 Mont. 433, 76 Pac. 943.

Deed of separation. An instrument by which, through the medium of some third person acting as trustee, provision is made by a husband for separation from his wife and for *her* separate maintenance. Whitney v. Whitney, 15 Misc. 72, 36 N.Y.S. 891, 892.

Deed of settlement. A deed formerly used in England for the formation of joint stock companies constituting certain persons trustees of the partnership property and containing regulations for the management of its private affairs. They are now regulated by articles of association.

Deed of trust. An instrument in use in many states, taking the place and serving the uses of a common-law mortgage, by which the legal title to real property is placed in one or more trustees, to secure the repayment of a sum of money or the performance of other conditions. Bank v. Pierce, 144 Cal. 434, 77 P. 1012; In re Sherman, D.C.Va., 12 F.Supp. 297, 298, 299. Though differing in form from mortgage, it is essentially a security. Bank of America Nat. Trust & Savings Ass'n v. Bank of Amador County, 135 Cal.App. 714, 28 P.2d 86, 88. In re Title Guaranty Trust Co., Mo.App., 113 S.W.2d 1053, 1057. See Trust Deed.

Deed poll. A deed which is made by one party only. See Hawkins v. Corbit, 83 Okl. 275, 201 P. 649, 653. A deed in which only the party making it executes it or binds himself by it as a deed. 3 Washb. R. P. 311. It was originally so called because the edge of the paper or parchment was *polled* or cut in a straight line, wherein it was distinguished from a deed indented or indenture. As to a special use of this term in Pennsylvania in colonial times, see Herron v. Dater, 120 U.S. 464, 7 S.Ct. 620, 624, 30 L.Ed. 748 (citing Evans v. Patterson, 71 U.S. 224, 4 Wall. 224, 18 L.Ed. 393).

Deed to lead uses. A deed made before a fine or common recovery, to show the object thereof.

As to "execution of deed," see Execution of Instrument.

Gratuitous deed. One made without consideration. 2 Steph.Com. 47. As to "Quitclaim" deed, "Tax" deed, "Trust" deed, and "Warranty" deed, see those titles.

DEED, ESTOPPEL BY. Such as arises from the provisions of a deed. Erickson v. Wiper, 33 N.D. 193, 157 N.W. 592, 598; Green v. Clark, 13 Vt. 158; Reinhard v. Virginia Lead Min. Co., 107 Mo. 616, 18 S.W. 17, 28 Am.St.Rep. 441.

A preclusion against the competent parties to a valid sealed contract and their privies to deny its force and effect by any evidence of inferior solemnity. Hart v. Anaconda Copper Mining Co., 69 Mont. 354, 222 P. 419, 421.

Such an estoppel occurs where a party has executed a deed, that is, a writing under seal (as a bond) reciting a certain fact, and is thereby precluded from afterwards denying, in any action brought upon that instrument, the fact so recited. Steph,P1. 197. A man shall always be *estopped* by his own deed, or not permitted to aver or prove anything in contradiction to what he has once so solemnly and deliberately avowed. 2 Bl.Comm. 295; Plowd. 434; Hudson v. Winslow Tp., 35 N.J.Law, 441; Taggart v. Risley, 4 Or. 242; Appeal of Waters, 35 Pa. 526, 78 Am. Dec. 354.

A warranty deed by one having only a contingent remainder passes title, by way of "estoppel" to grantee, as soon as remainder vests by happening of contingency. Thames *v.* Goode, 217 N.C. 639, 9 S.E.2d 485, 488.

"Estoppel by deed" is a bar precluding party from denying truth of his deed. Talley v. Howsley, Tex.Civ.App., 170 S.W.2d 240, 243. It is limited to an action founded on the deed itself. Hughes v. Cobb, 195 Ga. 213, 23 S.E.2d 701, 715. It applies to the maker of the deed, and does not ordinarily apply to the grantee. Hughes v. Cobb, 195 Ga. 213, 23 S.E.2d 701, 715. It arises only when suit is on the deed or concerning a right arising out of the deed and between parties or privies to the deed. Robert v. O'Connell, 269 Mass. 532, 169 N.E. 487, 488. It arises only where there is express representation as to ownership, title, or interest in question, or where there are express warranties thereto. Petition of Testan, 156 Misc. 449, 281 N.Y.S. 96. It cannot be invoked by one through whose imposition a statement was inserted in the deed. Capitol Nat. Bank & Trust Co. v. David B. Roberts, Inc., 129 Conn. 194, 27 A.2d 116, 119, 141 A.L.R. 1179. It precludes a party thereto and his privies as against other party and his privies. Sammons v. Brunson, Tex.Civ.App., 25 S.W.2d 685, 688.

A distinct and precise assertion or admission of fact is necessary. Cook v. Farley, 195 Miss. 638, 15 So.2d 352, 357.

Inducement to change course to one's disadvantage is essential. Funderburk v. Magnolia Sugar Co-op., La.App., 8 So.2d 374, 377.

The effect of doctrine is same as if in deed itself, there had been inserted express provision that it conveyed not only all title then possessed but all that might thereafter be acquired. Meyers v. American Oil Co., 192 Miss. 180, 5 So.2d 218, 220.

DEEM. To hold; consider; adjudge; condemn; determine; treat as if; construe. Douglas v. Edwards, C.C.A.N.Y., 298 F. 229, 237; In re Schmidt's Estate, 134 Wash. 525, 236 P. 274, 275; In re Green's Estate, 99 Misc. 582, 164 N.Y.S. 1063, 1083; Harder v. Irwin, D.C.N.Y., 285 F. 402, 404; First Nat. Bank v. Dodd, 118 Or. 1, 245 P. 503, 504. But see Kleppe v. Odin Tp., McHenry County, 40 N.D. 595, 169 N.W. 313, 314, which gives "deemed" the force of only a "disputable presumption," or of prima facie evidence. When, by statute, certain acts are "deemed" to be a crime of a particular nature, they are such crime, and not a semblance of it, nor a mere fanciful approximation to or designation of the offense. Com. v. Pratt, 132 Mass. 247; Commonwealth v. Brue, 284 Pa. 294, 131 A. 367, 368.

DEEMSTERS. Judges in the Isle of Man, who decide all controversies without process, writings, or any charges. These judges are chosen by the people, and are said by Spelman to be two in number. Spelman.

DEER-FALD. A park or fold for deer.

DEER-HAYES. Engines or great nets made of cord to catch deer. 19 Hen. VIII, c. 11.

DEFACE. To mar or destroy the face (that is, the physical appearance of written or inscribed characters as expressive of a definite meaning) of a written instrument, signature, inscription, etc., by obliteration, erasure, cancellation, or superinscription, so as to render it illegible or unrecognizable. Linney v. State, 6 Tex. 1, 55 Am.Dec. 756. See Cancel. In re Parsons' Will, 195 N.Y.S. 742, 745, 119 Misc. 26. Also used in respect of injury to monument, buildings and other structures. Saffell v. State, 113 Ark. 97, 167 S.W. 483. So, to deface the flag carries the meaning of dishonor, which imputes a lively sense of shaming or an equivalent acquiescent callousness. State v. Schlueter, 127 N.J.L. 496, 23 A.2d 249, 251,

DE FACTO. In fact; actually; indeed; in reality. Ridout v. State, 161 Tenn. 248, 30 S.W.2d 255, 257, 71 A.L.R. 830. Thus, an office, position or status existing under a claim or color of right such as a deputy county clerk. Heron v. Gaylor, 49 N.M. 62, 157 P.2d 239, 241; deputy clerk of court. State v. Brandon, 186 S.C. 448, 197 S.E. 113, 115; corporate office. In re Hillmark Associates, D.C.N.Y., 47 F.Supp. 605, 606; corporation, Municipal Bond & Mortgage Corporation v. Bishop's Harbor Drainage Dist., 133 Fla. 430, 182 So. 794, 797; Ebeling v. Independent Rural Telephone Co., 187 Minn. 604, 246 N.W. 373; court, Marckel Co. v. Zitzow, 218 Minn. 305, 15 N.W.2d 777, 778; depositary, School Dist. No. 1, Itasco County, v. Afton, 173 Minn. 428, 217 N.W. 496, 499; deputy sheriff, Malone v. Howell, 140 Fla. 693, 192 So. 224, 227; fire district commissioner, Petition of Board of Fire Com'rs of Columbia-Litchfield Fire Dist,. Sup., 29 N.Y.S.2d 605, 619; grand jury, McDonald v. Colden, 181 Misc. 407, 41 N.Y.S.2d 323, 327; guardian, State ex rel. Symons v. East Chicago State Bank, 106 Ind.App. 4, 17 N.E.2d 491, 494; judge, Annoni v. Bias Nadal's Heirs, C.C.A.Puerto Rico, 94 F.2d 513, 515; officer, Eaker v. Common School Dist. No. 73 of Butler County, Mo.App., 62 S.W.2d 778, 783; police officer, People ex ref. Mitchell v. Armspach, 314 Ill.App. 573, 41 N.E.2d 781; trustee, In re Wohl's Estate, 36 N.Y.S.2d 926,. 930.

DE FACTO GOVERNMENT. One that maintains itself by a display of force against the will of the rightful legal government and is successful, at least temporarily, in overturning the institutions of the rightful legal government by setting up its own in lieu thereof. Wortham v. Walker, 133 Tex. 255, 128 S.W.2d 1138, 1145.

DEFALCATION. The act of a defaulter; misappropriation of trust funds or money held in any fiduciary capacity; failure to properly account for such funds. Usually spoken of officers of corporations or public officials. In re Butts, D.C.N.Y., 120 F. 970; Crawford v. Burke, 201 Ill. 581, 66 N.E. 833.

Also set-off. The diminution of a debt or claim, by deducting from it a smaller claim held by the debtor or payor. Iron Works v. Cuppey, 41 Iowa, 104; Houk *v. Foley,* 2 Pen. & W., Pa., 250; McDonald v. Lee, 12 La. 435.

Colloquially, perhaps, the worn "defalcation" ordinarily implies some moral dereliction. As used in the Bankruptcy Act, it may demand some portion of misconduct, but it is

not synonymous with "embezzlement." The act of a receiver in a mortgage foreclosure suit in withdrawing and spending an amount allowed him by an order passing his intermediate account without waiting for the time for appeal to expire or consulting plaintiff as to whether it Intended to appeal, is a "defalcation". Central Hanover Bank & Trust Co. v. Herbst, C.C.A.X.Y., 93 F.2d 510, 511, 512, 114 A.L.R. 769.

DEFALK. To set off one claim against another; to deduct a debt due to one from a debt which one owes. Johnson v. Signal Co., 57 N.J.Eq. 79, 40 A. 193; Burris v. Boone, 4 Boyce, Del., 148, 86 A. 730. This verb corresponds only to the second meaning of "defalcation" as given above; a public officer or trustee who misappropriates or embezzles funds in his hands is not said to "defalk."

DEFAMACAST. Defamation by broadcast. American Broadcasting-Paramount Theatres, Inc. v. Simpson, 126 S.E.2d 873, 879, 106 Ga.App. 230.

DEFAMATION. The taking from one's reputation. The offense of injuring 'a person's character, fame, or reputation by false and malicious statements. The term seems to include both libel and slander. In general, see Shaw Cleaners & Dyers v. Des Moines Dress Club, 215 Iowa, 1130, 245 N.W. 231, 86 A.L.R. 839; Snavely v. Booth, 6 W. W.Harr. 378, 176 A. 649; Washer v. Bank of America Nat. Trust & Savings Ass'n, 128 P.2d 799. Libel. Seested v. Post Printing & Publishing Co., 326 Mo. 559, 31 S.W.2d 1045, 1052, Slander. Connelly v. McKay, 176 Misc, 685, 28 N.Y.S.2d 327, 329.

The distinction between "criticism" and "defamation" is that criticism deals only with such things as invite public attention or call for public comment, and does not follow a man into his private life, or pry into his domestic concerns, and it never attacks the individual, but only his work. Schwimmer v, Commercial Newspaper Co., 131 Misc. 552, 228 N.Y.S. 220, 221.

The fundamental difference between a right to "privacy" and a right to freedom from "defamation" is that the former directly concerns one's own peace of mind whereas the latter concerns primarily one's reputation. Themo v. New England Newspaper Pub. Co., 306 Mass. 54, 27 N.E.2d 753, 755.

DEFAMATORY. Calumnious; containing defamation; injurious to reputation; libelous; slanderous; words which produce any perceptible injury to the reputation of another. Sheridan V. Davies, 139 Kan. 256, 31 P.2d 51, 54.

DEFAMATORY PER QUOD. In respect of words: Those which require an allegation of facts, aside from the words contained in the article, by way of innuendo, to show wherein the words used libel the plaintiff, in order to state a cause of action in a complaint. Rowan v. Gazette Printing Co., 74 Mont. 326, 239 P. 1035, 1037.

DEFAMATORY PER SE. In respect of words: Those which by themselves, and as such, without reference to extrinsic proof, injure the reputation of the person to whom they are applied. Manley v. Harer, 73 Mont. 253, 235 P. 757, 758; Conrad v. Allis-Chalmers Mfg. Co., 228 Mo.App. 817, 73 S. W.2d 438, 446.

DEFAMES. L. Fr, Infamous. Britt. c. 15.

DEFAULT. By its derivation, a failure. Meadows v. Continental Assur. Co., C.C.A.Tex., 89 F. 2d 256. An omission of that which ought to be done. Town of Milton v. Bruso, 111 Vt. 82, 10 A. 2d 203, 205. Specifically, the omission or failure to perform a legal duty. Easterwood v. Willingham, Tex.Civ.App., 47 S.W.2d 393, 395; to observe a promise or discharge an obligation, Bradbury v. Thomas, 27 P.2d 402, 135 Cal.App. 435; or to perform an agreement, Eastman v. Morgan, D.C.N.Y., 43 F.Supp. 637, 641. The term also embraces the idea of dishonesty, In re State, 210 Wis. 9, 245 N. W. 844, 845, and of wrongful act, Greco v. S. S. Kresge Co., 277 N.Y. 26, 12 N.E.2d 557, 562, 115 A.L.R. 1020; or an act or omission discreditable to one's profession, Hilkert v. Canning, 58 Ariz. 290, 119 P.2d 233, 236,

In Practice

Omission; neglect or failure of any party to take step required of him in progress of cause. Indiana State Board of Medical Registration and Examination v. Pickard, 93 Ind.App. 171, 177 N.E. 870, 872. When a defendant in an action at law omits to plead within the time allowed him for that purpose, or fails to appear on the trial, he is said to *make default,* McCabe v. Tom, 35 Ohio App. 73, 171 N.E. 868, 869, and the judgment entered in the former case is technically called a "judgment by default." 3 Bl.Comm. 396; 1 Tidd, Pr. 562.

A "default" in an action at law is somewhat similar to the entry of a decree in equity that the bill be taken for confessed, neither being a final disposition. Felton v. Felton, 128 Conn. 564, 196 A. 791, 793.

In General

Default of issue. Failure to have living children or descendants at a given time or fixed point. George v. Morgan, 16 Pa. 106; In re Van Cleef, 92 Misc. 689, 157 N.Y.S. 549, 551.

Defaulter. One who makes default. One who misappropriates money held by him in an official or fiduciary character, or fails to account for such money.

Judgment by default. See Judgment.

DEFEASANCE. An instrument which defeats the force or operation of some other deed or estate. That which is in the same deed is called a "condition"; and that which is in another deed is a "defeasance." Com. Dig. "Defeasance." Beindorf v. Thorpe, 90 Okl. 191, 203 P. 475, 477; In re A. Roth Co., C.C.A.I11., 118 F.2d 156, 158.

A "defeasance" is a collateral deed made at the same time as a feoffment or other conveyance, containing certain conditions upon the performance of which the estate then created may be defeated or totally undone. Bach v. First Nat. Bank, 99 Ind.App. 590, 193 N.E. 696, 697.

In Conveyancing

A collateral deed made at the same time with a feoffment or other conveyance, containing certain conditions, upon the performance of which th' estate then created may be *defeated* or totally undone. 2 Bl.Comm. 327; Co. Litt. 236, 237.

An instrument accompanying a bond, recognizance, or judgment, containing a condition which,

when performed, *defeats* or undoes it. 2 Bl. Comm. 342; Miller v. Quick, 158 Mo. 495, 59 S.W. 955.

DEFEASIBLE. Subject to be defeated, annulled, revoked, or undone upon the happening of a future event or the performance of a condition subsequent, or by a conditional limitation. Usually spoken of estates and interests in land. For instance, a mortgagee's estate is defeasible (liable to be defeated) by the mortgagor's equity of redemption. Penick v. Atkinson, 139 Ga. 649, 77 S.E. 1055, 1057, 46 L.R.A.,N.S., 284; Murphy v. Murphy, 182 Ky. 731, 207 S.W. 491, 493.

DEFEASIBLE FEE. An estate in fee that is liable to be defeated by some future contingency; *e. g.,* a vested remainder which might be defeated by the death of the remainderman before the time fixed for the taking effect of the devise. Giltner's Trustee v. Talbott, 253 Ky. 474, 69 S.W.2d 981; Daly v. Pate, 210 N.C. 222, 186 S.E. 348, 349.

DEFEASIBLE TITLE. One that is liable to be annulled or made void, but not one that is already void or an absolute nullity. Elder v. Schumacher, 18 Colo. 433, 33 P. 175.

DEFEASIVE. Describes counterclaim which, if it prevails, will defeat right of plaintiffs to recover. Hayden v. Collins, 90 Utah, 238, 63 P.2d 223, 225.

DEFEAT. To prevent, frustrate, or circumvent; as in the phrase "hinder, delay, or defeat creditors." Coleman v. Walker, 3 Mete., Ky., 65, 77 Am.Dec. 163; Reuff-Griffin Decorating Co. v. Wilkes, 191 S.W. 443, 446, 173 *Ky.* 566.

To overcome or prevail against in any contest; as in speaking of the "defeated party" in an action at law. Wood v. Bailey, 21 Wall. 642, 22 L.Ed. 689. Or "defeated candidate" in an election. Norcop v. Jordan, 216 Cal. 764, 17 P.2d 123, 124.

To annul, undo, or terminate; as, a title or estate. See Defeasible.

DEFECT. The want or absence of some legal requisite; deficiency; imperfection; insufficiency. Sappenfield v. National Zinc Co., 94 Kan. 22, 145 P. 862, 863; Galloway v. City of Winchester, 299 Ky. 87, 184 S.W.2d 890, 892, 893. The want or absence of something necessary for completeness or perfection; a lack or absence of something essential to completeness; a deficiency in something essential to the proper use for the purpose for which a thing is to be used. Roberts v. Rogers, 129 Neb. 298, 261 N.W. 354; Terrell v. City of Orangeburg, 176 S.C. 518, 180 S.E. 670.

Thus, a bamboo vaulting pole which was not straight and was unbalanced had a "defect." McCormick v. Lowe & Campbell Athletic Goods Co., 235 Mo.App. 612, 144 S.W. 2d 866, 876.

DEFECT IN HIGHWAY OR STREET. Ordinarily anything in the condition or state of highway or street that renders it unreasonably safe for travel. Payne v. State Highway Commission, 136 Kan. 561, 16 P.2d 509, 511. Thus courts have held as highway or street defects corrugations, Cheney v. State Highway Commission, 142 Kan. 149, 45 P.2d 864, 866; spike in *cross* walk, Fay v. City of Green Bay, 240 Wis. 36, 1 N.W.2d 767, 768, a hollow, Adams v. Town of Bolton, 297 Mass. 459, 9 N.E.2d 562, 111 A.L.R. 856, and anything that may reasonably be expected to interfere with safe use of sidewalk by pedestrian. City of Birmingham v. Wood, 240 Ala. 138, 197 So. 885, 887.

DEFECT IN MACHINERY. Under Code 1907, § 3910, subd. 1, making the master liable for injury from defects in the condition of works or machinery, it is essential that there be inherent condition of a permanent nature which unfits machine for its uses, some weakness of construction with reference to the proposed uses, some misplacement of parts, or the absence of some part, some innate abnormal quality rendering its use dangerous, or some obstacle to the use or the way of use which is part of the condition of the machinery itself. Caldwell-Watson Foundry & Machine Co. v. Watson, 183 Ala. 326, 62 So. 859, 862.

DEFECT OF FORM. An imperfection in the style, manner, arrangement, or non-essential parts of a legal instrument, plea, indictment, etc., as distinguished from a "defect of substance." See *infra.*

DEFECT OF PARTIES. In pleading and practice. Insufficiency of the parties before a court in any given proceeding to give it jurisdiction and authority to decide the controversy, arising from the omission or failure to join plaintiffs or defendants who should have been brought in; never applied to a superfluity of parties or the improper addition of plaintiffs or defendants. Porter Const. Co. v. Berry, 136 Or. 80, 298 P. 179, 182; Salisbury v. Berry Motor Co., 122 Neb. 605, 241 N.W. 86, 87; De Pass v. City of Spartanburg, 190 S.C. 22, 1 S.E.2d 904, 908. It is not synonymous with "misjoinder of parties". Okmulgee Supply Co. v. Rotman, 144 Okl. 293, 291 P. 1, 2.

DEFECT OF SUBSTANCE. An imperfection in the body or substantive part of a legal instrument, plea, indictment, etc., consisting in the omission of something which is essential to be set forth. Sweeney v. Greenwood Index-Journal Co., D.C.S.C., 37 F.Supp. 484, 487.

DEFECTIVE. Lacking in some particular which is essential to the completeness, legal sufficiency, or security of the object spoken of; as a "defective" highway or bridge (Mennito v. Town of Wayland, Sup., 56 N.Y.S.2d 654, 664; Warren County v. Battle, 48 Ga.App. 240, 172 S.E. 673, 674) ; car coupler (McAllister v. St. Louis Merchants' Bridge Terminal Ry. Co., 324 Mo. 1005, 25 S.W.2d 791, 795) ; machinery (Riccio v. Town of Plainville, 106 Conn. 61, 136 A. 872, 873; Chaney v. Village of Riverton, 104 Neb. 189, 177 N.W. 845, 846, 10 A.L.R. 244; Bryan v. City of West Palm Beach, 75 Fla. 19, 77 So. 627) ; writ or recognizance (State v. Lavalley, 9 Mo. 836; McArthur v. Boynton, 19 Colo.App. 234, 74 P. 542) ; or title (Copertini v. Oppermann, 76 Cal. 181, 18 P. 256) ; service of process or return of service (Tioga Coal

Corporation v. Silman, 125 W.Va. 58, 22 S.E.2d 873, 876; State ex rel. Briggs v. Barns, 121 Fla. 857, 164 So. 539, 542).

DEFECTIVE OR INSUFFICIENT SPECIFICATIONS BY PATENTEE. Any failure either to describe or to claim the complete invention upon which the application for patent is founded. Robert v. Krementz, C.C.A.N.J., 243 F. 877, 881.

DEFECTIVE TITLE. With respect to negotiable paper within Negotiable Instruments Law, the title of a person who obtains instrument or any signature thereto by fraud, duress, or force and fear, or other unlawful means, or for an illegal consideration, or when he negotiates it in breach of faith or under such circumstances as amount to fraud. Stevens v. Pierce, 79 Oki. 290, 193 P. 417, 18 A.L.R. 7; (fraud) German-American Nat. Bank v. Kelley, 183 Iowa, 269, 166 N.W. 1053; Commercial Security Co. v. Jack, 29 N.D. 67, 150 N.W. 460, 461.

DEFECTUS. Lat. Defect; default; want; imperfection; disqualification.

Challenge Propter Defectum

A challenge to a juror on account of some legal disqualification, such as infancy, etc. See Challenge.

Defectus Sanguinis

Failure of the blood, i. *e.,* failure or want of issue.

DEFEND. To prohibit or forbid. To deny. To contest and endeavor to defeat a claim or demand made against one in a court of justice. Boehmer v. Irrigation Dist., 117 Cal, 19, 48 P. 908. To oppose, repel, or resist.

To protect, to shield, to make a stand for, or uphold by force or argument, vindicate, to maintain or keep secure, to guaranty, to agree to indemnify. Powell v. U. S., D.C.Va., 60 F.Supp. 433, 439.

Although a contract between mortgagee and mortgagor's creditor who purchased mortgaged automobile that creditor will "defend" mortgagee against all suits, etc., was held to be contract to defend litigation, not to indemnify. Hall v. Cannon, 90 Colo. 465, 9 P.2d 1057.

DEFENDANT. The person defending or denying; the party against whom relief or recovery is sought in an action or suit. Graham Bros. Aktiebolag v. St. Paul Fire & Marine Ins. Co., 126 Misc. 32, 212 N.Y.S. 380, 381; Atlantic Mut. Insurance Co. v. Alexandre, D.C.N.Y., 16 F. 279, 281; Siekmann v. Kern, 136 La. 1068, 68 So. 128. See, also, Ferguson v. Montgomery, 148 Ark. 83, 229 S.W. 30, 36 (election contest) ; Boyd v. Lambert, 58 Okl. 497, 160 P. 586, 587 (injunction bond) ; Alexander v. United States, C.C.A.Mo., 95 F.2d 873, 879 (joinder); Welty v. Schmutte, 128 Neb. 415, 258 N.W. 873 (mortgage foreclosure) ; Loft, Inc. v. Corn Products Refining Co., C.C.A.Ind., 103 F.2d 1, 5 (anti-trust prosecution).

Thus, railroads, on appeal by city to state district court from order of Minnesota Railroad and Warehouse Commission requiring grade separation, were held defendants entitled to remove cause to federal court. In re Chicago, M. St. P. & P. R. Co., D.C.Minn., 50 F.2d 430, 434.

In common usage, this term is applied to the party put upon his defense, or summoned to answer a charge or complaint, in any species of action, civil or criminal, at law or in equity. Strictly, however, it does not apply to the person against whom a real action is brought, for in that proceeding the technical usage is to call the parties respectively the "demandant" and the "tenant."

Defendant in error. The distinctive term appropriate to the party against whom a writ of error is sued out.

Principal defendant. One who has an interest in the controversy presented by the bill, and whose presence is requisite to the complete and partial adjudication of the controversy. Bird v. Sleppy, 265 Pa. 295, 108 A. 618, 619.

DEFENDARE. To answer for; to be responsible for. Medley.

DEFENDEMUS. Lat. A word used in grants and donations, which binds the donor and his heirs to defend the donee, if any one go about to lay any incumbrance on the thing given other than what is contained in the deed of donation. Bract. 1. 2, c. 16.

DEFENDER. (Fr.) To deny; to defend; to conduct a suit for a defendant; to forbid; to prevent; to protect.

In Scotch and canon law. A defendant.

DEFENDER OF THE FAITH. A peculiar title belonging to the sovereign of England, as that of "Catholic" to the king of Spain, and that of "Most Christian" to the king of France. These titles were originally given by the popes of Rome; and that of *Defensor Fidei* was first conferred by Pope Leo X. on King Henry VIII., as a reward for writing against Martin Luther; and the bull for it bears date *quinto Idus Octob.,* 1521. Enc. Lond,

DEFENDERE SE PER CORPUS SUUM. To offer duel or combat as a legal trial and appeal. Abolished by 59 Geo. III. § 46. See Battel.

DEFENDERE UNICA MANU. To wage law; a denial of an accusation upon oath. See Wager of Law.

DEFENDIT VIM ET INJURIAM. He defends the force and injury. Pieta, lib. 5, c. 39, § 1.

DEFENDOUR. L. Fr. A defender or defendant; the party accused in an appeal. Britt. c. 22.

DEFENERATION. The act of lending money on usury.

DEFENSA. In old English law. A park or place fenced in for deer, and defended as a property and peculiar for that use and service. Cowell.

DEFENSE. That which is offered and alleged by the party proceeded against in an action or suit, as a reason in law or fact why the plaintiff should not recover or establish what he seeks; what is put forward to diminish plaintiff's cause

of action or defeat recovery. 'Etna Life Ins. Co. v. Braukman, C.C.A.Colo., 70 F.2d 647, 649; Lindsay v. State, Tex.Civ.App., 25 S.W.2d 1113, 1115. More properly what is *sufficient* when offered for this purpose. In either of these senses it may be either a denial, justification, or confession and avoidance of the facts averred as a ground of action, or an exception to their sufficiency in point of law. Whitfield v. Aetna Life Insurance Co., C.C.Mo., 125 F. 270; Eagle Savings & Loan Ass'n v. West, 71 Ohio App. 485, 50 N.E.2d 352, 356; Paillet v. Vroman, 52 Cal.App.2d 297, 126 P. 2d 419, 421; (challenge to jurisdiction) Tradesmens Nat. Bank & Trust Co. v. Charlton Steam Shipping Co., D.C.Pa., 3 F.R.D. 363, 364; (denial) Levine v. Behn, 282 N.Y. 120, 25 N.E.2d 871, 873; (legal insufficiency) Dysart v. Remington Rand, D.C.Conn., 31 F.Supp. 296, 297; (payment) Hoadley v. W. T. Rawleigh Co., 112 Ind.App. 563, 44 N. E.2d 231, 232; (statute of limitations) Waggoner v. Feeney, 220 Ind. 543, 44 N.E.2d 499, 502.

In a stricter sense, defense is used to denote the answer made by the defendant to the plaintiff's action, by demurrer or plea at law or answer in equity. This is the meaning of the term in Scotch law. Ersk. Inst. 4, 1, 66. However, it has been held that the filing of a demurrer is not the making of a defense within meaning of the statute providing that, if no defense be made, the plaintiff cannot have judgment for any relief not specifically demanded, but, if defense be made, he may have judgment for other relief, under a prayer therefor. Union Light, Heat & Power Co. v. City of Bellevue, 284 Ky. 405, 144 S.W.2d 1046, 1047.

*Half defense* was that which was made by the form "defends the force and injury, and says," *(defendit vim et injuriam, et dicit.)*

*Full defense* was that which was made by the form "defends the force and injury when and where it shall behoove him, and the damages, and whatever else he ought to defend," *(defendit vim et injuriam quando et ubi curia consideravit, et damna et quicquid quod ipse defendere debet, et dicit,)* commonly shortened into "defends the force and injury when," etc. Gi1b.Com.P1. 188; 8 Term, 632; 3 Bos. & P. 9, note; Co.Litt. *127b.*

In matrimonial suits, in England, defenses are divided into *absolute, i. e.*, such *as*, being established to the satisfaction of the court, are a complete answer to the petition, so that the court can exercise no discretion, but is bound to dismiss the petition; and *discretionary,* or such as, being established, leave to the court a discretion whether it will pronounce a decree or dismiss the petition. Thus, in a suit for dissolution, condonation is an absolute, adultery by the petitioner a discretionary, defense. Browne, Div. 30.

Defense is not something by means of which party who interposes it can obtain relief for himself. Crisman v. Corbin, 169 Or. 332, 128 P.2d 959, 964.

Defense, as respects right to counsel to conduct defense of one charged with crime, includes every step in proceedings from time of arraignment until acquittal or conviction. State v. Hudson, 55 R.I. 141, 179 A. 130, 135, 100 A.L.R. 313.

Defense also means the forcible repelling of an attack made unlawfully with force and violence, such as the defense of the nation in time of war. United States v. 243.22 Acres of Land in Village of Farmingdale, Town of Babylon, Suffolk County, N. Y., D.C.N.Y., 43 F.Supp. 561, 567.

In old statutes and records, the term means prohibition; denial or refusal. *Enconter le defense et le commandement de* Toy; against the prohibition and commandment of the king. St. Westm. 1, c. 1. Also a state of severalty, or of several or exclusive occupancy; a state of inclosure.

### Affidavit of Defense

See Affidavit.

### Affirmative Defense

See that title.

### Equitable Defense

See that title.

### Frivolous Defense

One which at first glance can be seen to be merely pretensive, setting up some ground which cannot be sustained by argument. Dominion Nat. Bank v. Olympia Cotton Mills, C.C.S.C., 128 F. 182.

### Legal Defense

(1) A defense which is complete and adequate in point of law. (2) A defense which may be set up in a court of law; as distinguished from an "equitable defense," which is cognizable only in a court of equity or court possessing equitable powers,

### Meritorious Defense

One going to the merits, substance, or essentials of the case, as distinguished from dilatory or technical objections. Cooper v. Lumber Co., 61 Ark. 36, 31 S.W. 981.

### Partial Defense

One which goes only to a part of the cause of action, or which only tends to mitigate the damages to be awarded. Carter v. Bank, 33 Misc. 128, 67 N.Y.S. 300.

### Peremptory Defense

A defense which insists that the plaintiff never had the right to institute the suit, or that, if he had, the original right is extinguished or determined. 4 Bouv. Inst. No. 4206.

### Personal Defense

In negotiable instruments law. A defense which, though not good as against a holder in due course, is good against certain parties, because of their participation in or knowledge of certain transactions or facts from which such defense arises. Such defenses include all defenses that are not real or absolute defenses. Bauer and Simpson, Law of Business, 2d Ed., p. 329.

### Pretermitted Defense

One which was available to a party and of which he might have had the benefit if he had

pleaded it in due season, but which cannot afterwards be heard as a basis for affirmative relief. Swennes v. Sprain, 120 Wis. 68, 97 N.W. 511.

Real Defense

In negotiable instruments law. A defense inherent in the res and therefore good against anyone seeking to enforce the instrument, even a holder in due course. Real defenses include illegality, incapacity, forgery, material alteration, nondelivery of an incomplete instrument, and fraud in the inception. These defenses are good even against a holder in due course because, where they exist, no contract was formed. Bauer and Simpson, Law of Business, 2d Ed., p. 330.

Sham Defense

A false or fictitious defense, interposed in bad faith, and manifestly untrue, insufficient, or irrelevant on its face.

Self Defense

See that title.

DEFENSE ACTIVITY. The performance of war contracts by industry. The construction of implements of war. Any activity in aid of the war effort. Equitable Trust Co. v. Bowles, Em.App., 143 F.2d 735, 741.

DEFENSE AU FOND EN DROIT (called, also, *defense en droit).* A demurrer. 2 Low. C. 278. See, also, 1 Low. C. 216.

DEFENSE AU FOND EN FAIT. The general issue. 3 Low. C. 421.

DEFENSIVA. In old English law. A lord or earl of the marches, who was the warden and defender of his country. Cowell.

DEFENSIVE ALLEGATION. In English ecclesiastical law. A species of pleading, where the defendant, instead of denying the plaintiff's charge upon oath, has any circumstances to offer in his defense. This entitles him, in his turn, to the plaintiff's answer upon oath, upon which he may proceed to proofs as well as his antagonist. 3 Bl. Comm. 100; 3 Steph. Comm. 720.

DEFENSIVE WAR. A war in defense of, or for the protection of, national rights. It may be *defensive* in its principles, though *offensive* in its operations. 1 Kent, Comm. 50, note.

DEFENSO. That part of any open field or place that was allotted for corn or hay, and upon which there was no common or feeding, was anciently said to be *in defenso;* so of any meadow ground that was laid in for hay only. The same term was applied to a wood where part was inclosed or fenced, to secure the growth of the underwood from the injury of cattle. Cowell.

In the Civil Law

A defender; one who assumed the defense of another's case in court. Also an advocate. A tutor or curator.

In Canon Law

The advocate or patron of a church. An officer who had charge of the temporalities of the church.

In Old English Law

A guardian, defender, or protector. The defendant in an action. A person vouched in to warranty.

In General

Defensor civitatis. Defender or protector of a city or municipality. An officer under the Roman empire, whose duty it was to protect the people against the injustice of the magistrates, the insolence of the subaltern officers, and the rapacity of the money-lenders. Schm. Civil Law, Introd. 16; Cod. 1, 55, 4. He had the powers of a judge, with jurisdiction of pecuniary causes to a limited amount, and the lighter species of offenses. Cod. 1, 55, 1; Nov. 15, c. 3, § 2; Id. c. 6, § 1: He had also the care of the public records, and powers similar to those of a notary in regard to the execution of wills and conveyances.

Defensor fidei. Defender of the faith. See Defender.

DEFENSUM. A prohibition. An inclosure of land; any fenced ground. Medley, Eng. Const. Hist. See Defenso.

DEFER. Delay; put off; remand; postpone to a future time. The term does not have, however, the meaning of abolish, Moore v. Sampson County, 220 N.C. 232, 17 S.E.2d 22, 23, or omit, United States v. Murine Co., C.C.A.Ill., 90 F.2d 549, 551.

DEFERRED LIFE ANNUITIES. In English jaw. Annuities for the life of the purchaser, but not commencing until a date subsequent to the date of buying them, so that, If the purchaser die before that date, the purchase money is lost. Granted by the commissioners for reduction of the national debt. See 16 & 17 Viet. c. 45, § 2. Wharton.

DEFERRED PAYMENTS. Payments of principal or interest postponed to a future time; installment payments; a method of paying insurance proceeds. (Life insurance) Holmes v. John Hancock Mut. Life Ins. Co., 41 N.E.2d 909, 911, 288 N.Y. 106; (notes) First Nat. Bank v. Bosler, 297 Pa. 353, 147 A. 74, 75; (highway contract) Central Tractor & Equipment Co. v. Betz, 63 S.D. 435, 260 N.W. 269; (will) In re Mitinger's Estate, 114 Pa. Super. 209, 173 A. 432, 433.

DEFERRED SENTENCE. A sentence, the pronouncement of which has been postponed. It does not operate as a suspension of sentence. State v. Powell, 153 Wash. 110, 279 P. 573, 574.

DEFERRED STOCK. See Stock.

DEFIANCE. A contemptuous opposition or disregard openly expressed in words or action. State v. Mohar, 168 Wash. 368, 13 P.2d 454, 455. A provoking to combat, a challenge, a declaration of hostilities. Anderson-Berney Bldg. Co. v. Lowry, Tex.Civ.App., 143 S.W.2d 401, 403.

DEFICIENCY. A lack, shortage or insufficiency. The amount by which the income tax imposed exceeds the amount shown as the tax by the taxpayer upon his return. American Woolen Co. v. United States, Ct.C1., 21 F.Supp. 1021, 1022.

That part of a debt secured by mortgage not realized from sale of mortgaged property. Harrow v Metropolitan Life Ins. Co., 285 Mich. 349, 280 N.W. 785, 787. A judgment or decree for the amount of such deficiency is called a "deficiency judgment" or "decree." Phillips v. Union Central Life Ins. Co.., C.C.A.Minn., 88 F.2d 188, 189 (judgment) ; Grace v. Hendricks, 103 Fla. 1158, 140 So. 790, 794 (decree).

Technically speaking, there is no such thing under our law as a "deficiency judgment" in the sense that a formal judgment of that description is rendered by the court, or entered by the clerk for the amount not made by the sale of the mortgaged property. There is only the original judgment for the full amount of the indebtedness, upon which a deficiency may exist after the issuance and return of the special execution, or even perhaps of one or more general executions in addition. It has nevertheless been customary in ordinary parlance to refer to the amount still due after the return of the special execution as a "deficiency judgment." Bank of Douglas v. Neel, 30 Ariz. 375, 247 P. 132, 134.

DEFICIENCY BILL. In parliamentary practice, an appropriation bill covering items of expense omitted from the general appropriation bill or bills, or for which insufficient appropriations were made. If intended to cover a variety of sFch items, it is commonly called a "general deficiency bill;" if intended to make provision for expenses which must be met immediately, or which cannot wait the ordinary course of the general appropriation bills, it is called an "urgent deficiency bill."

Deficiente uno sanguine non potest esse hares, 3 Coke, 41. One blood being wanting, he cannot be heir. But see 3 & 4 Wm. IV. c. 106, § 9, and 33 & 34 Viet. c. 23, § 1.

DEFICIT. Something wanting, generally in the . accounts of one intrusted with money, or in the money received by him. Mutual L. & B. Ass'n v. Price, 19 Fla. 135. The term is broad enough to cover defalcation, misappropriation, shrinkage, or costs, and, in its popular meaning, signifies deficiency from any cause. Clement v. Whisnant, 208 N.C. 167, 179 S.E. 430, 433, 101 A.L.R. 698.

DEFILE. To debauch, deflower, or corrupt the chastity of a woman. The term does not necessarily imply force or ravishment, nor does it connote previous immaculateness. State v. Fernald, 88 Iowa, 553, 55 N.W. 534; State v. Besares, 73 Utah 141, 283 P. 738, 739. The term, when used in a statute penalizing any person who shall publicly defile any flag of the United States, has the meaning of dishonor. State v. Schlueter, 127 N. J.L. 496, 23 A.2d 249, 251.

DEFILEMENT. Uncleanness; impurity; corruption of morals or conduct. Young v. State, 194 Ind. 221, 141 N.E. 309, 311,

DEFINE. To explain or state the exact meaning of words and phrases; to state explicitly; to limit; to determine essential qualities of; to determine the precise signification of; to settle; to establish or prescribe authoritatively; to make clear. U. S. v. Smith, 5 Wheat. 160, 5 L.Ed. 57; Walling v. Yeakley, C.C.A.Colo., 140 F.2d 830, 832; Walters v. Richardson, 93 Ky. 374, 20 S.W. 279. To declare that a certain act shall constitute an offense is defining that offense. U. S. v. Arjona, 120 U.S. 488, 7 S.Ct. 628, 30 L.Ed. 728.

To "define" with respect to space, means to set or establish its boundaries authoritatively; to mark the limits of; to determine with precision or to exhibit clearly the boundaries of; to determine the end or limit; to fix or establish the limits. It is the equivalent to declare, fix or establish. Seeking out what exists already is not "defining." Redlands Foothill Groves v. Jacobs, D.C. Cal., 30 F.Supp. 995, 1004.

DEFINITE. Fixed, determined, defined, bounded. Board of Sup'rs of Yavapai County v. Stephens, 20 Ariz. 115, 177 P. 261, 262; Kintner v. Atlantic Communication Co., C.C.A.N.Y., 240 F. 716, 721.

A definite failure of issue occurs when a precise time is fixed by a will for a failure of issue. An indefinite failure of issue *Is* the period when the issue of the first taker shall become extinct and when there shall no longer be any issue of the grantee, but without reference to a particular time or event; Huxford v. Milligan, 50 Ind. 546; McWilliams v. Havely, 214 Ky. 320, 283 S.W. 103, 105.

DEFINITIO. Lat. Definition, or more strictly, limiting or bounding; as in the maxim of the civil law: *Omnis definitio periculosa est, parum est enim ut non subverti possit,* (Dig. 50, 17, 202;) *e.,* the attempt to bring the law within the boundaries of precise definitions is hazardous, as there are but few cases in which such a limitation cannot be subverted.

DEFINITION. A description of a thing by its properties; an explanation of the meaning of a word or term. Webster. The process of stating the exact means of a word by means of other words. Worcester. See Warner v. Beers, 23 Wend., N.Y., 103; Marvin v. State, 19 Ind. 181. Such a description of the thing defined, including all essential elements and excluding all nonessential, as to distinguish it from all other things and classes. Wilson v. Else, 204 Iowa 857, 216 N.W. 33, 37.

DEFINITIVE. That which finally and completely ends and settles a controversy. A definitive sentence or judgment is put in opposition to an interlocutory judgment. Thompson v. Graham, 246 Pa. 202, 92 A. 118, 119; Interstate Electric Co. v. Interstate Electric Co. of Shreveport, La.App., 6 So.2d 39, 40.

A distinction may be taken between a *final* and a *definitive* judgment. The former term is applicable when the judgment exhausts the powers of the particular court in which it is rendered; while the latter word designates a judgment that is above any review or contingency of reversal. U. S. v. The Peggy, 1 Cranch, 103, 2 L.Ed. 49.

DEFINITIVE SENTENCE. The final judgment, decree, or sentence of an ecclesiastical court. 3 Bl.Comm. 101.

DEFLECT. To turn aside, to deviate from a straight or horizontal line or from a proper posi-

tion, to swerve, to deviate. Grip Nut Co. v. MacLean-Fogg Lock Nut Co., D.C.Ill., 34 F.2d 41, 42.

DEFLORATION. Seduction or debauching. The act by which a woman is deprived of her virginity.

DEFORCE.

In English Law

To withhold wrongfully; to withhold the possession of lands from one who is lawfully entitled to them. 3 Bl.Comm. 172; Phelps v. Baldwin, 17 Conn. 212.

In Scotch Law

To resist the execution of the law; to oppose by force a public officer in the execution of his duty. Bell.

DEFORCEMENT. Deforcement is where a man wrongfully holds lands to which another person is entitled. It therefore includes disseisin, abatement, discontinuance, and intrusion. Co. Litt. 277b, 331b; Hopper v. Hopper, 21 N.J.L. 543. But it is applied especially to cases, not falling under those heads, where the person entitled to the freehold has never had possession; thus, where a lord has a seignory, and lands escheat to him *propter defectum sanguinis,* but the seisin is withheld from him, this is a deforcement, and the person who withholds the seisin is called a "deforceor." 3 Bl.Comm. 172.

In Scotch Law

The opposition or resistance made to messengers or other public officers while they are actually engaged in the exercise of their offices. Ersk. Inst. 4, 4, 32.

DEFORCIANT. One who wrongfully keeps the owner of lands and tenements out of the possession of them. 2 Bl.Comm. 350.

DEFORCIARE. L. Lat. To withhold lands or tenements from the rightful owner. This is a word of art which cannot be supplied by any other word. Co. Litt. 331b.

DEFORCIATIO. L. Lat. In old English law. A distress, distraint, or seizure of goods for satisfaction of a lawful debt. Cowell.

DEFORMITY. A deformed or misshapen condition; an unnatural growth, or a distorted or misshapen part or member; disfigurement; as a bodily deformity. People v. Lehrman, 251 App.Div. 451, 296 N.Y.S. 580, 582.

In insurance. Representations in application for insurance that applicant never had any "infirmity" or "deformity" must be construed as meaning deformity or infirmity of substantial character apparently materially impairing applicant's health, which, if known, probably would have deterred company from issuing policy. (Life insurance) Eastern Dist. Piece Dye Works v. Travelers' Ins. Co., 234 N.Y. 441, 138 N.E. 401, 404, 405, 26 A.L.R. 1505; (accident insurance) Commercial Casualty Ins. Co. v. Mathews, 57 Ga.App. 446, 195 S.E. 887, 892.

DEFOSSION. The punishment of being buried alive.

DEFRAUD. To practice fraud; to cheat or trick. State v. Harroun, 199 Mo. 519, 98 S.W. 467, 470; James v. State, 43 Ga.App. 324, 158 S.E. 644, 645. To deprive a person of property or any interest, estate, or right by fraud, deceit, or artifice. State v. Vandenburg, 9 W.W.Harr. 498, 2 A.2d 916, 919. But not by force or intimidation. Hammerschmidt v. U. S., 265 U.S. 182, 44 S.Ct. 511, 68 L. Ed. 968; Norton v. U. S., C.C.A.Cal., 92 F.2d 753, 756.

DEFRAUDACION. In Spanish law. The crime committed by a person who fraudulently avoids the payment of some public tax.

DEFRAUDATION. Privation by fraud.

DEFUNCT. Deceased; a deceased person. A common term in Scotch law. A corporation which has ceased to function. Tozier v. Woodworth, 135 Me. 46, 188 A. 771, 773.

The term is synonymous with "dead." Farmers Union Co-op. Brokerage v. Palisade Farmers Union Local No. 714, 69 S.D. 126, 7 N.W.2d 293, 295.

DEFUNCTUS. Lat. Dead. "Defunctus sine prole," dead without (leaving) issue.

DEGASTER. L. Fr. To waste.

DEGRADATION. A deprivation of dignity; dismission from office. An ecclesiastical censure, whereby a clergyman is divested of his holy orders. There are two sorts by the canon law, one *summary,* by word only; the other *solemn,* by stripping the party degraded of those ornaments and rights which are the ensigns of his degree. Degradation is otherwise called "deposition," but the canonists have distinguished between these two terms, deeming the former as the greater punishment of the two. There is likewise a degradation of a lord or knight at common law, and also by act of parliament. Wharton.

DEGRADATIONS. A term for waste in the French law.

DEGRADING. Reviling; holding one up to public obloquy; lowering a person in the estimation of the public.

DEGREE.

In General

The state or civil condition of a person, State v. Bishop, 15 Me. 122; An honorable state or condition to which a student is advanced in testimony of proficiency in arts and sciences. Commonwealth v. New England College of Chiropractic, 221 Mass. 190, 108 N.E. 895, 896; The grade or distance one thing may be removed from another. Superior Lloyds of America v. Foxworth, Tex. Civ.App., 178 S.W.2d 724, 725.

They are of pontifical origin. See 1 Schmidt, Thesaurus, 144; Vicat, *Doctores;* Minshew, Diet. *Bacheler;* Merlin *Repertoire Univ.;* Van Espen. pt. 1, tit. 10; Giannone, *Istoria di Napoli,* lib. xi. c. 2, for a full account of this matter.

In the Law of Descent and Family Relations

A step or grade, *i. e.,* the distance, or number of removes, which separates two persons who are related by consanguinity. Thus we speak of a brother as being in the second degree of kindred. Calvert v. Beck, 240 Ala. 442, 199 So. 846, 847.

In Criminal Law

The term "degree" denotes a division or classification of one specific crime into several grades or *stadia* of guilt, according to the circumstances attending its commission. Thus, in some states, there may be "murder in the second degree."

DEHORNER. A rubbing alcohol addict. Powell v. State, 179 Md. 399, 18 A.2d 587, 590.

DEHORS. L. Fr. Out of; without; beyond; foreign to; unconnected with. Blackford v. Anderson, 226 Iowa 1138, 286 N.W. 735, 746. *Dehors* the record; foreign to the record. 3 Bl.Comm. 387.

DEHYDRATE. To deprive or to be free of water or elements of water or to suffer loss of water. In re Benner, Cust. & Pat.App., 46 F.2d 383, 384.

DEI GRATIA. Lat. By the grace of God. A phrase used in the formal title of a king or queen, importing a claim of sovereignty by the favor or commission of God. In ancient times it was incorporated in the titles of inferior officers, (especially ecclesiastical,) but in later use was reserved as an assertion of "the divine right of kings."

DEI JUDICIUM. The judgment of God. The old Saxon trial by ordeal, so called because it was thought to be an appeal to God for the justice of a cause, and it was believed that the decision was according to the will and pleasure of Divine Providence. Wharton.

DEJACION. In Spanish law. Surrender; release; abandonment; *e. g.,* the act of an insolvent in surrendering his property for the benefit of his creditors, of an heir in renouncing the succession, the abandonment of insured property to the underwriters.

DEJERATION. A taking of a solemn oath.

DEL BIEN ESTRE. L. Fr. In old English practice. Of well being; of form. The same as *de bene esse.* Britt. c. 39.

DEL CREDERE. In mercantile law. A phrase borrowed from the Italians, equivalent to our word "guaranty" or "warranty," or the Scotch term "warrandice;" an agreement by which a factor, when he sells goods on credit, for an additional commission, (called a *"del credere* commission,") guaranties the solvency of the purchaser and his performance of the contract. Such a factor is called a *"del credere* agent" He is a mere surety, liable to his principal only in case the purchaser makes default. Story, Ag. 28; Lemnos Broad Silk Works v. Spiegelberg, 217 N.Y.S. 595, 597, 127 Misc. 855; Commercial Investment Trust v. Stewart, 235 Mich. 502, 209 N.W. 660, 661; Commonwealth v. Thorne, Neale & Co., 264 Pa. 408,10? A. 814, 815; State v. Tuffs, 54 Mont. 20, 165 P. 1107, 1108.

DELAISSEMENT. In French marine law. Abandonment. Emerig. Tr. des Ass. ch. 17.

DELATE. In Scotch law. To accuse. Delated, accused. *Delatit off arte and parte,* accused of being accessary to. 3 How. St. Tr. 425, 440.

DELATIO. In the civil law. An accusation or information.

DELATOR. An accuser; an informer; a sycophant.

DELATURA. In old English law. The reward of an informer. Whishaw.

DELAY. To retard; obstruct; put off; postpone*, defer; procrastinate; prolong the time of or before; hinder; interpose obstacles; as, when it is said that a conveyance was made to "hinder and delay creditors." Mercantile Co. v. Arnold, 108 Ga. 449, 34 S.E. 176; Ellis v. Valentine, 65 Tex. 532; Blair v. Blair, 122 Me. 500, 120 A. 902, 905. The term does not imply dishonesty or involve moral wrong. Citizens & Southern Nat. Bank v. Kontz, 185 Ga. 131, 194 S.E. 536, 544.

DELAY RENTAL. Rent, usually on oil and gas leases, paid for additional time in which to utilize land. It does not depend on oil or gas produced, does not exhaust substance of land, and resembles a bonus payment, which is an advance royalty. Commissioner of Internal Revenue v. Wilson, C. C.A.Tex., 76 F.2d 766, 769; State v. Magnolia Petroleum Co., Tex.Civ.App., 173 S.W.2d 186, 190.

DELECTUS PERSONAE. Lat. Choice of the person. Johnston v. Winn, Tex.Civ.App., 105 S.W.2d 398, 400. By this term is understood the right of a partner to exercise his choice and preference as to the admission of any new members to the firm, and as to the persons to be so admitted, if any. People v. Herbert, 162 Misc. 817, 295 N.Y.S. 251, 253. The doctrine does not apply to corporations. Adams v. St. Clair, 185 Miss. 416, 188 So. 559, 560.

In Scotch Law

The personal preference which is supposed to have been exercised by a landlord in selecting his tenant, by the members of a firm in making choice of partners, in the appointment of persons to office, and other cases. Nearly equivalent to personal trust, as a doctrine in law. Bell.

Delegata potestas non potest delegari. 2 Inst. 597. A delegated power cannot be delegated.

DELEGATE. A person who is delegated or commissioned to act in the stead of another, Landro v. Pacific Atlantic S. S. Co., D.C.Wash., 30 F.Supp. 538, 539; a person to whom affairs are committed by another; an attorney.

A person elected or appointed to be a member of a representative assembly. Usually spoken of one sent to a special or occasional assembly or

convention. Manston v. McIntosh, 58 Minn. 525, 60 N.W. 672, 28 L.R.A. 605.

The representative in congress of one of the organized territories of the United States. To send as an agent or representative; to commit to the care or management of another.

DELEGATES, THE HIGH COURT OF. In English law. Formerly the court of appeal from the ecclesiastical and admiralty courts. Abolished upon the judicial committee of the privy council being constituted the court of appeal in such cases.

DELEGATION. A sending away; a putting into commission; the assignment of a debt to another; the intrusting another with a general power to act for the good of those who depute him; a body of delegates.

At Common Law

The transfer of authority by one person to another; the act of making or commissioning a delegate.

The whole body of delegates or representatives sent to a convention or assembly from one district, place, or political unit are collectively spoken of as a "delegation."

In the Civil Law

A species of novation which consists in the change of one debtor for another, when he who is indebted substitutes a third person who obligates himself in his stead to the creditor, or to the person appointed by him so that the first debtor is acquitted and his obligation extinguished, and the creditor contents himself with the obligation of the second debtor. Delegation is essentially distinguished from any other species of novation, in this: that the former demands the consent of all three parties, but the latter that only of the two parties to the new debt. 1 Domat, § 2318; Adams v. Power, 48 Miss. 454.

Delegation is novation effected by the intervention of another person whom the debtor, in order to be liberated from his creditor, gives to such creditor, or to him whom the creditor appoints; and such person so given becomes obliged to the creditor in the place of the original debtor. Burge, Sur. 173.

*Perfect delegation* exists when the debtor who makes the obligation is discharged by the creditor.

*Imperfect delegation* exists when the creditor retains his rights against the original debtor. 2 Duvergnoy, n. 169.

Delegatus non potest delegare. A delegate cannot delegate; an agent cannot delegate his functions to a subagent without the knowledge or consent of the principal; the person to whom an office or duty is delegated cannot lawfully devolve the duty on another, unless he be expressly authorized so to do. 9 Coke, 77; Broom, Max. 840; 2 Kent, Comm. 633; 2 Steph.Comm. 119; Blake v. Allen, 221 N.C. 445, 20 S.E.2d 552, 554.

DELESTAGE. In French marine law. A discharging of ballast *(lest)* from a vessel.

DELETE. In Scotch law. To erase; to strike out.

DELETERIOUS. Hurtful, morally or physically; injurious, as influence; poisonous; unwholesome. State v. Crabtree Co., 218 Minn. 36, 15 N.W.2d 98.

Thus struvite crystals which developed in jar of wet shrimp after packing, O'Hare v. Petersen, 174 Misc. 48-t, 21 N.Y.S.2d 487, 491, and bones in fish and fragments of shell in oysters constitute "deleterious substances". United States v. 1232 Cases American Beauty Brand Oysters, D.C.Mo., 43 F.Supp. 749, 751.

DELF. A quarry or mine. 31 Eliz. c. 7.

Deliberandum est diu quod statuendum est semel. 12 Coke, 74. That which is to be resolved once for all should be long deliberated upon.

DELIBERATE, v. To weigh, ponder, discuss, regard upon, consider. Cole v. List & Weatherly Const. Co., La.App., 156 So. 88, 90. To examine, to consult, in order to form an opinion. McGregor v. State, 83 Tex.Cr.R. 35, 201 S.W. 184, 186. To weigh in the mind; to consider the reasons for and against; to consider maturely; reflect upon; as to deliberate a question; to weigh the arguments for and against a proposed course of action. People v. Thomas, 25 Ca1.2d 880, 156 P.2d 7, 17, 18.

DELIBERATE, *adj.* Well advised; carefully considered; not sudden or rash; circumspect; slow in determining. McClendon v. Louisiana Cent. Lumber Co., 17 La.App. 246, 135 So. 754, 756. Willful rather than merely intentional. Cole v. List & Weatherly Const. Co., La.App., 156 So. 88, 90. Formed, arrived at, or determined upon as a result of careful thought and weighing of considerations, as a deliberate judgment or plan; carried on coolly and steadily, especially according to a preconceived design; given to weighing facts and arguments with a view to a choice or decision; careful in considering the consequences of a step; slow in action; unhurried; characterized by reflection; dispassionate; not rash. People v. Thomas, 25 Ca1.2d 880, 156 P.2d 7, 17, 18. The word carries with it an implication of some obstinacy, headstrongness, foolish daring, or intentional wrongdoing. Brown v. Kansas City Bridge Co., La.App., 191 So. 755, 757.

By the use of this word, in describing a crime, the idea is conveyed that the perpetrator weighs the motives for the act and its consequences, the nature of the crime, or other things connected with his intentions, with a view to a decision thereon; that he carefully considers all these; and that the act is not suddenly committed. It implies that the perpetrator must be capable of the exercise of such mental powers as are called into use by deliberation and the consideration and weighing of motives and consequences. In re Nunns, 188 App.Div. 424, 176 N.Y.S. 858, 865; Jenkins v. Carman Mfg. Co., 79 Or. 448, 155 P. 703, 705.

"Deliberation" and "premeditation" are of the same character of mental operations, differing only in degree. Deliberation is but prolonged premeditation. In other words, in law, deliberation is premeditation in a cool state of the blood, or, where there has been heat of passion, it is premeditation continued beyond the period within which there has been time for the blood to cool, in the given case. Deliberation is not only to think of beforehand, which may be but for an instant, but the inclination to do the act is considered, weighed, pondered upon, for such a length of time after a provocation is given as the jury may find was sufficient for the blood to cool. One in a heat of passion

may premeditate without deliberating. Deliberation is only exercised in a cool state of the blood, while premeditation may be either in that state of the blood or in the heat of passion. State v. Hall, 40 N.M. 128, 55 P.2d 740, 742; People v. Thomas, 25 Ca1.2d 880, 156 P.2d 7, 17; State v. Payne, 213 N. C. 719, 197 S.E. 573, 579.

DELIBERATELY. Willfully; with premeditation; intentionally; purposely; in cold blood. Averheart v. State, 158 Ark. 639, 238 S.W. 620, 621; State v. Young, 314 Mo. 612, 286 S.W. 29, 34; Csanyi v. Csanyi, 93 N.J.Eq. 11, 115 A. 76, 78; State v. Johnson, 92 Kan. 441, 140 P. 839, 840.

DELIBERATION. The act or process of deliberating. The act of weighing and examining the reasons for and against a contemplated act or course of conduct or a choice of acts or means. See Deliberate.

DELICATESSEN. Prepared foods, such as cooked meats, relishes, preserves and the like. North Ave. Market v. Keys, 164 Md. 185, 164 A. 152, 154. Also, a store that sells such prepared foods. Parker v. Levin, 285 Mass. 125, 188 N.E. 502, 503, 90 A. L.R. 1446.

Delicatus debitor est odiosus in lege. A luxurious debtor is odious in law. 2 Bulst. 148. Imprisonment for debt has now, however, been generally abolished.

DELICT. In the Roman and civil law. A wrong or injury; an offense; a violation of public or private duty.

It will be observed that this word, taken in *its* most general sense, is wider in both directions than our English term "tort." On the one hand, it includes those wrongful acts which, while directly affecting some individual or his property, yet extend in their injurious consequences to the peace or security of the community at large, and hence rise to the grade of crimes or misdemeanors. These acts were termed in the Roman law "public delicts;" while those for which the only penalty exacted was compensation to the person primarily injured were denominated "private delicts." On the other hand, the term appears to have included injurious actions which transpired without any malicious intention on the part of the doer. Thus Pothier gives the name *"quasi delicts"* to the acts of a person who, without malignity, but by an inexcusable imprudence, causes an injury to another. Poth.Obl. 116. But the term is used in modern jurisprudence as a convenient synonym of "tort."

*Quasi Delict*

An act whereby a person, without malice, but by fault, negligence, or imprudence not legally excusable, causes injury to another. They were four in number, viz.: (1) Qui *judex Went suam fecit,* being the offense of partiality or excess in the *judex,* (juryman.) (2) *Dejecturn effusumve aliquid,* being the tort committed by one's servant in emptying or throwing something out of an attic or upper story upon a person passing beneath. (3) *Darnnurn infecturn,* being the offense of hanging dangerous articles over the heads of persons passing along the king's highway. (4) Torts committed by one's agents in the course of their employment. Brown.

DELICTUAL FAULT. An act, productive of obligations, which takes place between persons juridically strangers to each other; it supposes the absence of obligation and its result is the creation of one. Reserve Ins. Co. v. Fabre, 149 So.2d 413, 416, 243 La. 982.

DELICTUM. Lat. A delict, tort, wrong, injury, or offense. Actions *ex delicto* are such as are founded on a tort, as distinguished from actions on contract.

Culpability, blameworthiness, or legal delinquency. The word occurs in this sense in the maxim, *"In pari delicto melior est conditio defendentis"* (which see).

A challenge of a juror propter *delictum* is for some crime or misdemeanor that affects his credit and renders him infamous. 3 Bl.Comm. 363; 2 Kent, Comm. 241.

DELIMIT. To mark or lay out the limits or boundary line of a territory or country; to fix or to mark the limits of; to demarcate; bound. Walling v. Yeakley, C.C.A.Colo., 140 F.2d 830, 832.

DELIMITATION. The act of fixing, marking off, or describing the limits or boundary line of a territory, country, authority, right, statutory exception or the like. See Delimit.

DELINQUENCY. Failure, omission, violation of duty. State or condition of one who has failed to perform his duty. Travelers' Protective Ass'n of America v. Ziegler, Tex.Civ.App., 250 S.W. 1115, 1116; Robinson v. Miller, 317 Ill. 501, 148 N.E. 319, 322. Synonymous with misconduct and offense. Boynton Cab Co. v. Neubeck, 237 Wis. 249, 296 N.W. 636, 639.

Delinquens per iram provocatus puniri debet mitius. 3 Inst. 55. A delinquent provoked by anger ought to be punished more mildly.

DELINQUENT, n. In the civil law. He who has been guilty of some crime, offense, or failure of duty.

DELINQUENT, *adj.* As applied to a debt or claim, it means simply due and unpaid at the time appointed by law or fixed by contract; as, a delinquent tax. Chauncey v. Wass, 35 Minn. 1, 30 N.W. 826; Gallup v. Schmidt, 154 Ind. 196, 56 N. E. 450. As applied to a person, it commonly means that he is grossly negligent or in willful default in regard to his pecuniary obligations, or even that he is dishonest and unworthy of credit. Boyce v. Ewart, Rice S. C., 140; Ferguson v. Pittsburgh, 159 Pa. 435, 28 Atl. 118; Grocers' Ass'n v. Exton, 18 Ohio Cir.Ct.R. 321.

DELINQUENT CHILD. An infant of not more than specified age, Phillips v. State, Tex.Cr.App., 20 S.W.2d 790, 791, who has violated any law or who is incorrigible; (prostitute) Bolker v. State, 134 Neb. 255, 278 N.W. 377, 379; (thief) Rose v. State, 137 Tex.Cr.R. 316, 129 S.W.2d 639, 640; (felony) State v. Connally, 190 La. 175, 182 So. 318, 319.

Although the terms dependent child and delinquent child, as used in juvenile court law, are largely synonymous, State v. Clevenger, 161 Wash. 306, 296 P. 1054; a neglected and dependent child is not necessarily a delinquent child. In re Santillanes, 47 N.M. 140, 138 P.2d 503, 513.

DELINQUENT JUVENILE. See Delinquent Child.

DELINQUENT TAXES. Past due and unpaid taxes. Ryan v. Roach Drug Co., 113 Okl. 130, 239 P. 912, 918; Cornell v. Maverick Loan & Trust Co., 95 Neb. 9, 144 N.W. 1072, 1074.

DELIRIUM. In medical jurisprudence. Delirium is that state of the mind in which it acts without being directed by the power of volition, which is wholly or partially suspended. This happens most perfectly in dreams. But what is commonly called "delirium" is always preceded or attended by a feverish and highly diseased state of the body. The patient in delirium is wholly unconscious of surrounding objects, or conceives them to be different from what they really are. His thoughts seem to drift about, wildering and tossing amidst distracted dreams. And his observations, when he makes any, as often happens, are wild and incoherent; or, from excess of pain, he sinks into a low muttering, or silent and death-like stupor. The law contemplates this species of mental derangement as an intellectual eclipse; as a darkness occasioned by a cloud of disease passing over the mind; and which must soon terminate in health or in death. Supreme Lodge v. Lapp, 25 Ky.Law Rep. 74, 74 S.W. 656; Sommerville v. Greenhood, 65 Mont. 101, 210 P. 1048, 1054; Grand Lodge, A. 0. U. W. of Arkansas, v. Mode, 157 Ark. 62, 247 S.W. 386, 388; (distinguished from insane delusion) Schoenhoff v. Haering, 327 Mo. 837, 38 S.W.2d 1011, 1015.

DELIRIUM FEBRILE. In medical jurisprudence. A form of mental aberration incident to fevers, and sometimes to the last stages of chronic diseases.

DELIRIUM TREMENS. A disorder of the nervous system, involving the brain and setting up an attack of temporary delusional insanity, sometimes attended with violent excitement or mania, caused by excessive and long continued indulgence in alcoholic liquors, or by the abrupt cessation of such use after a protracted debauch. Horn v. Commonwealth, 292 Ky. 587, 167 S.W.2d 58, 61; Hartin v. Hysee Inghram Tire Co., 153 Pa.Super. 121, 33 A.2d 471, 473. See Insanity.

DELITO. In Spanish law. Crime; a crime, offense, or delict. White, New Recop. b. 2, tit. 19, c. 1, § 4.

DELIVERANCE. In practice. The verdict, rendered by a jury.

Second Deliverance

In practice. A writ allowed a plaintiff in replevin, where the defendant has obtained judgment for return of the goods, by default or nonsuit, in order to have the same distress again delivered to him, on giving the same security as before. 3 Bl.Comm. 150; 3 Steph.Comm. 668.

DELIVERY. The act by which the res or substance thereof is placed within the actual or constructive possession or control of another. Poor v. American Locomotive Co., C.C.A.I11., 67 F.2d 626, 630.

What constitutes delivery depends largely on the intent of the parties. It is not necessary that delivery should be by manual transfer. Miller v. Hospelhorn, 176 Md. 356, 4 A.2d 728, 733.

"Delivery" required in conveyance of personal qhattels as against all but vendor, is delivery in its natural sense ; that is, a change of possession. Goodhue v. State St. Trust Co., 267 Mass. 28, 165 N.E. 701, 705.

In General

The transfer from one person to another of the res or a right or interest therein, which means more than physical transfer of possession, Murphy v. Smith, 291 Mass. 93, 195 N.E. 912; Pure Oil Co. v. Evans, 369 Ill. 416, 17 N.E.2d 23, 24. Although in the popular sense, in the case of a contract or lease or the like, it implies a transfer of the tangible contract. Lease, Roberts v. Cyr, 136 Me. 39, 1 A.2d 281, 282; release for injury, Pevesdorf v. Union Electric Light & Power Co., 333 Mo. 1155, 64 S.W.2d 939; check, Irving Trust Co. v. Leff, 253 N.Y. 359, 171 N.E. 569; bank passbook, Brooks v. Mitchell, 163 Md. 1, 161 A. 261, 266, 84 A.L.R. 547.

Absolute and conditional. An absolute delivery, as distinguished from conditional delivery or delivery in escrow, is one which is complete upon the actual transfer of the instrument from the possession of the grantor. Dyer v. Skadan, 128 Mich. 348, 87 N.W. 277, 278, 92 Am.St.Rep. 461. A conditional delivery is one which passes the thing subject to delivery from the possession of the grantor, but is not to be completed by possession of the grantee, or a third person as his agent, until the happening of a specified event. Silliman v. Dobner, 165 Minn. 87, 205 N.W. 696, 697.

Actual and constructive. Actual delivery consists in the giving real possession to the vendee or his servants or special agents who are identified with him in law and represent him. Carr v. St. Louis-San Francisco Ry. Co., Mo.App., 284 S.W. 184, 185. It is a formal immediate tradition of the property to the vendee. Bridgham v. Hinds, 120 Me. 444, 115 A. 197, 199, 21 A.L.R. 1024. It contemplates a manual transfer of the property. Callan v. Mutual Life Ins. Co., La.App., 147 So. 110, 111.

Constructive delivery is a general term, comprehending all those acts which, although not truly conferring a real possession of the thing sold on the vendee, have been held, by construction of law, equivalent to acts of real delivery.

Constructive delivery includes symbolic or substituted delivery and all those *traditiones fictce* which have been admitted into the law as sufficient to vest the absolute property in the vendee and bar the rights of lien and stoppage *in transitu,* such as marking and setting apart the goods as belonging to the vendee, charging him with warehouse rent, etc. See In re Nesto, C.C.A.Pa., 270 F. 503. A constructive delivery of personalty takes place when the goods are set apart and notice given to the person to whom they are to be delivered. The Titania, C.C.A., 131 F. 229, 65 C.C.A. 215, or when, without actual transfer of the goods or their symbol, the conduct of the parties is such as to be inconsistent with any other supposition than that there has been a change In the nature of the holding. Swafford v. Spratt, 93 Mo.App. 631, 67 S.W. 701.

Delivery bond. A bond given upon the seizure of goods (as under the revenue laws) conditioned for

their restoration to the defendant, or the payment of their value, if so adjudged.

Delivery order. An order addressed, in England, by the owner of goods to a person holding them on his behalf, requesting him to deliver them to a person named in the order. Delivery orders are chiefly used in the case of goods held by dock companies, wharfingers, etc. National Wholesale Grocery Co. v. Mann, 251 Mass. 238, 146 N.E. 791, 793.

Failure to make delivery, see Failure to Make Delivery.

Second delivery. The legal delivery by the depositary of a deed placed in escrow. Thornhill v. Olson, 31 N.D. 81, 153 N.W. 442, 445, L.R.A.1916A, 493, Ann.Cas.1917E, 427.

Symbolical delivery. The constructive delivery of the subject-matter of a sale, where it is cumbersome or inaccessible, by the actual delivery of some article which is conventionally accepted as the symbol or representative of it, or which renders access to it possible, or which is the evidence of the purchaser's title to it; as the key of a warehouse, or a bill of lading of goods on shipboard. Hall v. Kansas City Terra Cotta Co., 97 Kan. 103, 154 P. 210, 212, L.R.A.1916D, 361, Ann. Cas.1918D, 605.

In Conveyancing

The final and absolute transfer of a deed, properly executed, to the grantee, or to some person for his use, in such manner that it cannot be recalled by the grantor. Gatchell v. Gatchell, 127 Me. 328, 143 A. 169, 170; Arndt v. Lapel, 214 Iowa 594, 243 N.W. 605, 610; delivery to a stranger, Hall v. Hall, 292 Ky. 772, 168 S.W.2d 10, 14; or depositary, Stalting v. Stalting, 52 S.D. 309, 217 N.W. 386, 389.

In Law of Sales

The tradition or transfer of the possession of personal property from one person to another. Bowles v. Beucher, D.C.Mass., 53 F.Supp. 984, 987; delivery of a bill of sale or written evidence of title as sufficient delivery, Smith v. Acorn, D.C. Mun.App., 32 A.2d 252, 255; by carrier, Rice & Lockwood Lumber Co. v. Boston & M. R. R., 308 Mass. 101, 31 N.E.2d 219, 221, 222, 223.

"Delivery" occurs whenever, at time and place fixed by law or agreed on by parties, seller does everything necessary to put goods completely and unconditionally at buyer's disposal. Fox v. Young, Tex.Civ.App., 91 S.W.2d 857, 859.

In Medical Jurisprudence

The act of a woman giving birth to her offspring. Blake v.-Junkins, 35 Me. 433.

DELUSION. In medical jurisprudence. An insane delusion is an unreasoning and incorrigible belief in the existence of facts which are either impossible absolutely, or, at least, impossible under the circumstances of the individual. It is never the result of reasoning and reflection; it is not generated by them, and it cannot be dispelled by them; and hence it is not to be confounded with an *opinion,* however fantastic .the latter may be. Guiteau's Case, D.C.D.C., 10 Fed. 161, 170; Davidson v. Piper, 221 Iowa 171, 265 N.W. 107, 109; McKinnon v. State, 51 Ga.App. 549, 181 S.E. 91; Hallucination as a delusion, Petroleum Casualty Co. v. Kincaid, Tex.Civ.App., 93 S.W.2d 499, 501; belief in the impossible, In re Leedom's Estate, 347 Pa. 180, 32 A.2d 3; as respects testamentary capacity, In re McDowell's Estate, 103 N.J.Eq. 346, 143 A. 325, 326.

Systematized Delusion

One based on a false premise, pursued by a logical process of reasoning to an insane conclusion; there being one central delusion around which other aberrations of the mind converge; Taylor v. McClintock, 87 Ark. 243, 112 S.W. 405. See Insanity.

DEM. An abbreviation for "demise;" *e. g., Doe dem. Smith,* Doe, on the demise of Smith.

DEMAIN. See Demesne.

DEMAND, v. In practice. To claim as one's due; to require; to ask relief. To summon; to call in court. "Although solemnly *demanded,* comes not, but makes default." Fossett v. State, 34 Okl.Cr. 106, 245 P. 668, 669.

DEMAND, n. A peremptory claim to thing of right, differing from claim, in that it presupposes that there is no defense or doubt upon question of right, Golden v. Golden, 155 Oki. 10, 8 P.2d 42, 45; Anderson v. Commercial Credit Co., 110 Mont. 333, 101 P.2d 367, 369; National Life & Accident Ins. Co. v. Dove, 141 Tex. 464, 174 S.W.2d 245, 247.

The assertion of a legal right; a legal obligation asserted in the courts; a word of art of an extent greater in its signification than any other word except "claim." Nunn v. Titche-Goettinger Co., Tex.Civ.App., 196 S.W. 890, 892. Demand for payment. Peterson v. Rodgers, 51 Ariz. 502, 78 P.2d 480, 482; assessment upon corporate stock of deceased. Smith v. Fechheimer, 124 Fla. 757, 169 So. 395, 398; presentment of statement, Davison v. Klaess, 280 N.Y. 252, 20 N.E.2d 744, 746. However, under some statutes "demand" has a more restricted meaning. Hillside Securities Co. v. Minter, 300 Mo. 380, 254 S.W. 188, 193.

A debt or amount due. Inhabitants of Town of Frankfort v. Waldo Lumber Co., 128 Me. 1, 145 A. 241, 243; Caldwell v. Morfa, D.C.Tex., 24 F.2d 106, 107.

An imperative request preferred by one person to another, under a claim of right, requiring the latter to do or yield something or to abstain from some act. Zimmerman v. Hicks, C.C.A., 7 F.2d 443, 445; Norwood Nat. Bank v. Piedmont Pub. Co., 106 S.C. 472, 91 S.E. 866, 867; school district's request that depositary honor checks for salaries. School District of City of Lansing v. Fidelity & Casualty Co. of New York, 266 Mich. 189, 253 N.W. 263; demand for extradition, Ex parte King, 139 Me. 203, 28 A.2d 562, 564.

The seeking after a commodity or service. It is not something static, but necessarily contains the idea of "competition" and a realization that markets are as much limited by sales efforts as by capacity to produce. Mendota Coal & Coke Co. v. Eastern Ry. & Lumber Co., C.C.A.Wash., 53 F.2d 77, 82.

—Compulsory demand. "Compulsory demand" by the true owner of an article, justifying surrender and recovery by the one who surrenders it as against his vendor, means when the true owner presents his claim and establishes his paramount title. Jordan v. Van Duzee, 139 Minn. 103, 165 N.W. 877, 879, L.R.A. 1918B, 1136.

—Cross-demand. A demand that is preferred by one party to an action in opposition to a demand already preferred against him by his adversary. Drovers' State Bank v. Elliott, 97 Kan. 64, 154 P. 255, 256.

—Demand in reconvention. A demand which the defendant institutes in consequence of that which the plaintiff has brought against him. Used in Louisiana. Equivalent to a "counterclaim" elsewhere. McLeod v. Bertschey, 33 Wis. 177, 14 Am. Rep. 755.

—Demand note. A note that is due at once; one on which suit may be brought without any formal demand. Wilson v. Stark, 146 Miss. 498, 112 So. 390, 392.

—Legal demand. A demand properly made, as to form, time, and place, by a person lawfully authorized. Foss v. Norris, 70 Me. 118.

—On demand. A promissory note payable "on demand" is a present debt, and is payable without any actual demand, or, if a demand is necessary, the bringing of a suit is enough. Appeal of Andress, 99 Pa. 424.

—Personal demand. A demand for payment of a bill or note, made upon the drawer, acceptor or maker, in person. See 1 Daniel, Neg. Inst. § 589.

—Reasonable public demand for a bank. Such a desire upon the part of the community for the bank as will make its coming welcome and insure an amount of business sufficient to promise it success. It may come from the natural desire of the community and upon its own initiative, or it may be the result of propaganda. State v. State Securities Commission, 145 Minn. 221, 176 N.W. 759, 760.

DEMAND NOTE. A note which expressly states that it is payable on demand, on presentation or at sight; a note in which no time for payment is expressed, Cassity v. Cassity, 147 Kan. 411, 76 P.2d 862, 866; Kent v. Lampman, 59 Cal.App.2d 407, 139 P.2d 57, 59; Tarlton v. Johnson, Mo.App., 138 S.W.2d 49, 52; a note issued, accepted or indorsed when overdue, as regards person so issuing, accepting or indorsing it. Nees v. Hagan, 22 Tenn.App. 28, 118 S.W.2d 566, 568; DeLoach v. Adams Loan & Investment Co., 62 Ga.App. 61, 7 S.E.2d 580, 581.

DEMANDA. In Spanish law. The petition of a plaintiff, setting forth his demand. Las Partidas, pt. 3, tit. 10, 1. 3.

DEMANDANT. The plaintiff or party suing in a real action. Co. Litt. 127.

DEMANDRESS. A female demandent.

DEMEANOR. As respects a witness or other person, relates to physical appearance. People v. Vaughan, 131 Cal.App. 265, 21 P.2d 438. It embraces such facts as the tone of voice in which a witness' statement is made, the hesitation or readiness with which his answers are given, the look of the witness, his carriage, his evidences of surprise, his gestures, his zeal, his bearing, his expression, his yawns, the use of his eyes, his furtive or meaning glances, or his shrugs, the pitch of his voice, his self-possession or embarrassment, his air of candor or seeming levity. Rains v. Rains, 17 N.J.Misc. 310, 8 A.2d 715, 717.

DEMEASE. In old English law. Death.

DEMEMBRATION. In Scotch law. Maliciously cutting off or otherwise separating one limb from another. 1 Hume, 323; Bell.

DEMENS. One whose mental faculties are enfeebled; one who has lost his mind; distinguished from *amens,* one totally insane. 4 Coke, 128.

DEMENTED. Of unsound mind.

DEMENTENANT EN AVANT. L. Fr. From this time forward. Kelham.

DEMENTIA. See Insanity.

DEMENTIA PRAECOX. A term used to include a wide range of mental disorders which occur in early life. It is also called adolescent insanity and schizophrenia. Dementia praecox includes three types, namely, primary dementia, catatonia, and hebephrenia. Loftin v. Yancey, 182 Okl. 313, 77 P.2d 107, 108; Honrath v. New York Life Ins. Co., 65 S.D. 480, 275 N.W. 258, 259, 112 A.L.R. 1272; Lee v. United States, C.C.A.Ga., 91 F.2d 326, 330. Also, see Insanity.

DEMESNE. Domain; dominical; held in one's own right, and not of a superior; not allotted to tenants.

In the language of pleading, own; proper; original. Thus, *son assault demesne,* his own assault, his assault originally or in the first place.

### Ancient Demesne

See Ancient.

### Demesne as of Fee

A man is said to be seised *in his demesne as of fee* of a corporeal inheritance, because he has a property, *dominicum* or *demesne,* in the *thing* itself. But when he has no dominion in the thing itself, as in the case of an incorporeal hereditament, he is said to be *seised* as of fee, and not in his *demesne* as of fee. 2 Bl. Comm. 106; Littleton, § 10; Barnet v. Ihrie, 17 Serg. & R. (Pa.) 196.

Demesne Lands

In English law. Those lands of a manor not granted out in tenancy, but reserved by the lord for his own uSe and occupation. Lands set apart and appropriated by the lord for his own private use, as for the supply of his table, and the maintenance of his family; the opposite of *tenemental* lands. Tenancy and demesne, however, were not in every sense the opposites of each other; lands held for years or at will being included among demesne lands, as well as those in the lord's actual possession. Spelman; 2 Bl. Comm. 90.

Demesne Lands of the Crown

That share of lands reserved to the crown at the original distribution of landed property, or which came to it afterwards by forfeiture or otherwise. 1 Bl. Comm. 286; 2 Steph. Comm. 550.

Demesnial

Pertaining to a *demesne.*

DEMI. French. Half; the half. Used chiefly in composition.

As to demi "Mark," "Official," "Vill," see those titles.

DEMI-SANGUE, or DEMY-SANGUE. Half-blood.

DEMIDIETAS. In old records. A half or moiety.

DEMIES. In some universities and colleges this term is synonymous with "scholars."

DEMINUTIO. In the civil law. A taking away; loss or deprivation. See Capitis Deminutio.

DEMISE, v. In conveyancing. To convey or create an estate for years or life; to lease. The usual and operative word in leases: "Have granted, *demised,* and to farm let, and by these presents do grant, *demise,* and to farm let." 2 Bl. Comm. 317; 1 Steph. Comm. 476; Co. Litt. 45a; Carr v. King, 24 Cal.App. 713, 142 P. 131, 133.

DEMISE, n. In conveyancing. A conveyance of an estate to another for life, for years, or at will; most commonly for years; a lease. 1 Steph. Comm. 475. Priddy v. Green, Tex.Civ.App., 220 S.W. 243, 248. Originally a posthumous grant; commonly a lease or conveyance for a term of years; sometimes applied to any conveyance, in fee, for life, or for years. Pub. St. Mass. 1882, p. 1289.

"Demise" is synonymous with "lease" or "let." The use of the term in a lease imports a covenant for quiet enjoyment. Evans v. Williams, 291 Ky. 484, 165 S.W.2d 52, 55; Sixty-Third & Halsted Realty Co. v. Chicago City Bank & Trust Co., 299 Ill.App. 297, 20 N.E.2d 162, 167; and implies a covenant by lessor of good right and title to make the lease. Evans v. Williams, 291 Ky. 484, 165 S.W.2d 52, 55.

A charter of a barge without motive power accompanied by bargee paid by owner, The Nat. E. Sutton, D.C.N.Y., 42 F.2d 229, 232; Harbor Towboat Co. v. Lowe, D.C.N.Y., 47 F.Supp. 454, 456; or of a tug or other vessel under circumstances making charterer owner pro hac vice, Davison Chemical Corporation v. The Henry W. Card, D.C. N.Y., 51 F.Supp. 380, 382; Conners Marine Co. v. Wathen, D.C.N.Y., 43 F.Supp. 283, 284. Under a demise charter, there is but a hiring of the vessel, under which no title passes to the charterer but merely the right to possess and control it for a limited period. McGahern v. Koppers Coal Co., C.C.A.Pa., 108 F.2d 652, 653.

The word is also used as a synonym for "decease" or "death." In England it is especially employed to denote the death of the sovereign.

—Demise and redemise. In conveyancing. Mutual leases made from one party to another on each side, of the same land, or something out of it; as when A. grants a lease to B. at a nominal rent (as of a pepper corn), and B. redemises the same property to A. for a shorter time at a real, substantial rent. Jacob; Whishaw.

—Demise of the crown. The natural dissolution of the king is generally so called; an expression which signifies merely a transfer of property. By demise of the crown we mean only that, in consequence of the disunion of the king's natural body from his body politic, the kingdom is transferred or demised to his successor, and so the royal dignity remains perpetual. 1 Bl. Comm. 249; Plowd. 234.

—Several demises. In English practice. In the action of ejectment, it was formerly customary, in case there were any doubt as to the legal estate being in the plaintiff, to insert in the declaration several demises from as many different persons; but this was rendered unnecessary by the provisions of the common-law procedure acts.

—Single demise. A declaration in ejectment might contain either one demise or several. When it contained only one, it was called a "declaration with a single demise."

DEMISI. Lat. I have demised or leased. *Demisi, concessi, et ad firmam tradidi;* have demised, granted, and to farm let. The usual operative words in ancient leases, as the corresponding English words are in the modern forms. 2 Bl. Comm. 317, 318; Koch v. Hustis, 113 Wis. 599, 87 N.W. 834.

DEMISSIO. L. Lat. A demise or letting. Chiefly used in the phrase *ex demissione* (on the demise), which formed part of the title of the cause in the old actions of ejectment, where it signified that the nominal plaintiff (a fictitious person) held the estate "on the demise" of, that is, by a lease from, the real plaintiff.

DEMOBILIZATION. In military law. The dismissal of an army or body of troops from active service.

DEMOCRACY. That form of government in which the sovereign power resides in and is exercised by the whole body of free citizens, as distinguished from a monarchy, aristocracy, or oligarchy. According to the theory of a pure democracy, every citizen should partici[P]ate directly in the business of governing, and the legislative

assembly should comprise the whole people. But the ultimate lodgment of the sovereignty being the distinguishing feature, the introduction of the representative system does not remove a government from this type. However, a government of the latter kind is sometimes specifically described as a "representative democracy."

Town form of government constitutes pure democracy as distinguished from representative government. Commonwealth v. Town of Hudson, 315 Mass. 335, 52 N.E.2d 566, 572.

*Democracy* is loosely used of governments in which the sovereign powers are exercised by all the people or ,a large number of them, or specifically, in modern use, of a representative government where there is equality of rights without hereditary or arbitrary differences in rank or privilege; and is distinguished from *aristocracy*. * * * In modern representative democracies, as the United States and France, though the governing body, that is, the electorate, is a minority of the total population, the principle on which the government is based is popular sovereignty, which distinguishes them from *aristocracies*. Webster's New Int.Dict.

DEMOCRATIC. Of or pertaining to democracy, or to a political party called "democratic," particularly, in the United States, the Democratic party, which succeeded the Anti-federalist, or Republican, party.

DEMOLISH. To throw or pull down; to raze; to destroy the fabrication of; to pull to pieces; hence to ruin; destroy. Star Mfg. Co. v. Quarrles, 172 Okl. 550, 46 P.2d 497, 498. To destroy totally or to commence the work of total destruction with the purpose of completing the same. 50 L.J.M.C. 141. It is not synonymous with "remove." Durrett v. Woods, 155 La. 533, 99 So. 430, 431.

DEMONETIZATION. The disuse of a particular metal for purposes of coinage. The withdrawal of the value of a metal as money.

DEMONSTRATE. To teach by exhibition of samples; to derive from admitted premises by steps of reasoning which admit of no doubt; to prove indubitably. Espenhain v. Barker, 121 Or. 621, 256 P. 766, 768. To show or prove value or merits by operation. J. A. Fay & Egan Co. v. Mims, 151 S.C. 484, 149 S.E. 246, 248.

DEMONSTRATIO. Lat. Description; addition; denomination. Occurring often in the phrase, *"Falsa demonstratio non nocet,"* (a false description does not harm.) 2 Bla. Comm. 382, n.; 2 P. Wms. 140; 1 Greenl. Ev. § 291; Wigr. Wills 208, 233.

DEMONSTRATION. Description; pointing out. That which is said or written to designate a thing or person.

Evidence

Absolutely convincing proof. That proof which excludes all possibility of error. Treadwell v. Whittier, 80 Cal. 574, 22 P. 266, 5 L.R.A. 498, 13 Am.St.Rep. 175.

False Demonstration

See False Demonstration.

DEMONSTRATIVE EVIDENCE. That evidence addressed directly to the senses without intervention of testimony. Kabase v. State, 31 Ala.App. 77, 12 So.2d 758, 764.

*Demonstrative evidence* of *negligence* has been applied to that kind of negligence which is usually expressed by *res ipsa loquitur.*

DEMONSTRATIVE LEGACY. See Legacy.

DEMOTION. A reduction to lower rank or grade, or to lower type of position, though holder's salary remains the same. Reed v. City Council of City of Roseville, 60 Cal.App.2d 628, 141 P.2d 459, 463. Assistant fire chief reduced in rank, McCarthy v. Steinkellner, 223 Wis. 605, 270 N.W. 551; under Teachers' Tenure Act. Smith v. School Dist. of Philadelphia, 334 Pa. 197, 5 A.2d 535, 539; indefinite suspension without pay. City of Knoxville v. Smith, 176 Tenn. 73, 138 S.W.2d 422, 424.

DEMPSTER. In Scotch law. A doomsman. One who pronounced the sentence of court. 1 How. State Tr. 937.

DEMUR. To present a demurrer; to take an exception to the sufficiency in point of law of a pleading or state of facts alleged. See Demurrer.

DEMURRABLE. Subject to a demurrer. A pleading, petition, or the like, is said to be demurrable when it does not state such facts as support the claim, prayer, or defense put forward. 5, Ch. Div. 979.

DEMURRAGE. In maritime law. The sum which is fixed by the contract of carriage, or which is allowed, as remuneration to the owner of a ship for the detention of his vessel beyond the number of days allowed by the charter-party for loading and unloading or for sailing. Also the detention of the vessel by the freighter beyond such time. See 3 Kent, Comm. 203; 2 Steph. Comm. 185. Continental Grain Co. v. Armour Fertilizer Works, D.C.N.Y. 22 F.Supp. 49, 54; Yone Suzuki v. Central Argentine Ry., C.C.A.N.Y., 27 F.2d 795, 804. The term has been adopted in railroad practice. Central R. Co. of N. J. v. Gallena-Poole, Inc., 107 N.J.Eq. 267, 152 A. 251, 252; Sibley, L. B. & S. Ry. Co. v. Braswell Sand & Gravel Co., La.App., 199 So. 427, 428.

The sum agreed to be paid to the ship for delay caused without her fault, and which ordinarily does not begin to run until the lay days have been used up. Earn Line S. S. Co. v. Manati Sugar Co., C.C.A.N.Y., 269 F. 774, 776. The amount agreed upon or allowed by law for unreasonable detention. Clyde v. Wood, 179 N.Y.S. 252, 255, 189 App. Div. 737; W. R. Grace & Co. v. Hansen, C.C.A.Wash., 273 F. 486, 496.

"Demurrage" is only an extended freight or reward to the vessel, in compensation for the earnings she is improperly caused to lose. Every improper detention of a vessel may be considered a demurrage, and compensation under that name be obtained for it. Donaldson v. McDowell, Holmes, 290, Fed.Cas.No.3,985.

"Demurrage" is a claim for damages for failure of the consignee to accept delivery of the goods. Little v. One Cargo of Lumber, D.C.Fla., 2 F.2d 608, 609.

DEMURRANT. One who demurs; the party who, in pleading, interposes a demurrer.

DEMURRER.

In Equity

An allegation of a defendant, which, admitting the matters of fact alleged by the bill to be true, shows that as they are therein set forth they are insufficient for the plaintiff to proceed upon or to oblige the defendant to answer; or that, for some reason apparent on the face of the bill, or on account of the omission of some matter which ought to be contained therein, or for want of some circumstances which ought to be attendant thereon, the defendant ought not to be compelled to answer to the whole bill, or to some certain part thereof. Mitf. Eq. Pl. 107. See, also, Goldsmith v. Mead Johnson & Co., 176 Md. 682, 7 A.2d 176, 179.

A general demurrer in equity, as a separate entity from a demurrer on specific grounds, tests the equity of a bill in the same manner as a motion to dismiss for want of equity, and, in considering the bill on such a demurrer, amendable defects are taken as amended. Johnson v. Pugh, 193 So. 317, 239 Ala. 12.

By Federal Rules of Civil Procedure, demurrers, pleas and exceptions for insufficiency of a pleading are abolished; every defence in law shall be made by motion or by answer; motions going to jurisdiction, venue, process, or failure to state a claim are to be disposed of before trial, unless the court orders otherwise.

In Pleading

The formal mode of disputing the sufficiency in law of the pleading of the other side. In effect it is an allegation that, even if the facts as stated in the pleading to which objection is taken be true, yet their legal consequences are not such as to put the demurring party to the necessity of answering them or proceeding further with the cause. Green v. Carter, 28 Ohio App. 492, 162 N. E. 814, 815; State v. Broad River Power Co., 177 S.C. 240, 181 S.E. 41; Mountain Park Institute v. Lovill, 198 N.C. 642, 153 S.E. 114, 116; State v. California Packing Corporation, 105 Utah 191, 145 P.2d 784.

A "demurrer" is not an absolute admission of any fact but simply admits those facts that are well pleaded. Commonwealth ex rel. Duff v. Keenan, 347 Pa. 574, 33 A.2d 244, 248.

An objection made by one party to his opponent's pleading, alleging that he ought not to answer it, for some defect in law in the pleading. It admits the facts, and refers the law arising thereon to the court. R. L. Davies & Co. v. Blomberg, 185 N.C. 496, 117 S.E. 497.

It imports that the objecting party will not proceed,' but will wait the judgment of the court whether he is bound so to do. Co.Litt. 71b; Steph.P1. 61; Kramer v. Barth, 139 N.Y.S. 341, 344, 79 Misc. 80.

Classification and Varieties

A *general* demurrer is a demurrer framed in general terms, without showing specifically the nature of the objection, and which is usually resorted to where the objection is to matter of substance. Steph.Pl. 140-142; 1 Chit.Pl. 663. See Maryland Casualty Co. v. Arnold, 51 Ga.App. 562, 180 S.E. 906, 907.

Thus, a demurrer on the ground that the complaint sets forth no cause of action, is a general demurrer, Alabama Power Co. v. Curry, 228 Ala. 444, 153 So. 634; and a motion to dismiss a bill on ground that there is no equity apparent on the face thereof or that court has no jurisdiction is treated as a general demurrer. People v. Sterling, 357 Ill. 354, 192 N.E. 229, 231.

A general demurrer to an indictment challenges only matters of form and substance appearing on its face. It is one which raises an objection that averments are insufficient in law to support the action or defense without specifying any particular cause or defect, and is sufficient only to reach matters of substance. Mountain Park Institute v. Lovill, 198 N. C. 642, 153 S.E. 114, 116.

A motion to dismiss a complaint for failure to state a claim upon which relief can be granted is equivalent to a general demurrer. Louisiana Farmers' Protective Union v. Great Atlantic & Pacific Tea Co. of America, D.C.Ark., 40 F.Supp. 897, 908.

A *special* demurrer goes merely to structure or form of pleading which it attacks, and usually only to some portion thereof, and must distinctly specify wherein defect lies. Huff v. Palmer, 356 Ill. 563, 191 N.E. 199, 202; Cameron v. Evans Securities Corp., 119 Cal.App. 164, 6 P.2d 272, 274; It is one which excepts to the sufficiency of the pleadings on the opposite side, and shows specifically the nature of the objection, and the particular ground of the exception. 3 Bouv. Inst. no. 3022. Dairy Regior Land Corporation v. Harding, Tex.Civ.App., 266 S.W. 181, 182; Johanson v. Cudahy Packing Co., 107 Utah 114, 152 P.2d 98, 105.

While general demurrer on specific grounds relating to different allegations of bill may be called "special demurrer," which attacks different parts of bill specifically, such demurrer fails, if bill is good as pleading and remaining allegations are sufficient to support relief prayed. Forcum v. Symmes, 106 Fla. 510, 143 So. 630, 631.

A *speaking* demurrer is one which, in order to sustain itself, requires the aid of a fact not appearing on the face of the pleading objected to, or, in other words, which alleges or assumes the existence of a fact not already pleaded, and which constitutes the ground of objection and is condemned both by the common law and the code system of pleading. Ellis v. Perley, 200 N.C. 403, 157 S.E. 29, 30. Ferris v. Union Say. Bank, 45 Ga.App. 544, 165 S.E. 450; Preston A. Blair Co. v. Rose, 56 Idaho 114, 51 P.2d 209, 212; Metropolitan Life Ins. Co. v. Perrin, 184 Miss. 249, 183 So. 917, 920; Town of Randolph v. Lyon, 106 Vt. 495, 175 A. 1, 2; Whaley v. First Nat. Bank, 229 Ala. 153, 155 So. 574.

A speaking demurrer is one which alleges some new matter, not disclosed by the pleading against which the demurrer is aimed and not judicially known or legally presumed to be true. Blythe v. Enslen, 219 Ala. 638, 123 So. 71, 73; Kansas Life Ins. Co. v. First Bank of Truscott, Tex.Civ. App., 47 S.W.2d 675, 677; In re Ferris' Estate, Iowa, 14 N.W.2d 889, 894.

A *parol* demurrer (not properly a demurrer at all) was a staying of the pleadings; a suspension of the proceedings in an action during the nonage of an infant, especially in a real action. Now abolished. 3 Bl. Comm. 300.

Demurrer book. In practice. A record of the issue on a demurrer at law, containing a transcript of the pleadings, with proper entries; and intended for the use of the court and counsel on the argument. 3 Bl. Comm. 317; 3 Steph. Comm. 581.

Demurrer ore tenus. An objection to the introduction of any evidence on the ground that the complaint or petition fails to state a cause of action. Cleveland v. Bateman, 21 N.M. 675, 158 P. 648, 652, Ann.Cas.1918E, 1011; Peerless Fixture Co. v. Frick, Mo.App., 133 S.W.2d 1089, 1090. This name is sometimes given to a ruling on an objection to evidence, but is not properly a demurrer at all. Mandelert v. Land Co., 104 Wis. 423, 80 N.W. 726; It should be considered as a general demurrer only. Dawkins v. People's Bank & Trust Co., 117 Okl. 181, 245 P. 594, 596.

Demurrer to evidence. This proceeding is analogous to a demurrer to a pleading. It is an objection or exception by one of the parties in an action at law, to the effect that the evidence which his adversary produced is insufficient in point of law (whether true or not) to make out his case or sustain the issue. Upon joinder in demurrer, the jury is discharged, and the case is argued to the court *in bane,* who gives judgment upon the facts as shown in evidence. See 3 Bl. Comm. 372; State v. Moody, 150 N.C. 847, 64 S.E. 431, 432. The practice has been largely superseded by motions for nonsuit and directed verdict. Hopkins v. Nashville, C. & St. L. Ry., 96 Tenn. 409, 34 S.W. 1029, 1034, 32 L.R.A. 354. Thus, a motion to nonsuit, Herrick v. Barzee, 96 Or. 357, 190 P. 141, 145; Perkins v. Maiden, 57 Cal.App.2d 46, 134 P.2d 30, 34, a motion to dismiss at close of plaintiff's evidence for failure to prove essential facts, Mansfield v. Reserve Oil Co., 38 N.M. 187, 29 P.2d 491, 492; Fewkes v. Borah, 376 Ill. 596, 35 N.E.2d 69, 72, have been held to be, and a defendant's motion for a directed verdict, made at close of the evidence, is equivalent to, a "demurrer to the evidence" for insufficiency to sustain a verdict for plaintiff. Mills v. Richardson, 126 Me. 244, 137 A. 689, 690. A motion to exclude evidence has the effect of a demurrer to the evidence, the chief points of difference being the stage of the proceeding at which each is available and the consequences resulting from deferring the motion to exclude. Thornhill v. Thornhill, 172 Va. 553, 2 S.E.2d 318, 319. For a discussion of the subject see Hopkins v. Nashville, C. & St. L. R. R., 96 Tenn. 409, 34 S.W. 1029, 32 L.R.A. 354.

Demurrer to interrogatories. Where a witness objects to a question propounded (particularly on the taking of a deposition) and states his reason for objecting or refusing to answer, it is called a "demurrer to the interrogatory," though the term cannot here be understood as used in its technical sense. 2 Swanst. 194; Gresl. Eq. Ey, 61; 2 Atk. 524; 1 Y. & J. 132.

DEMY SANKE, DEMY SANGUE. Half-blood. A corruption of *demi-sang.*

DEN. A valley. Blount. A hollow place among woods. Cowell.

DEN AND STROND. In old English law. Liberty for ships or vessels to run aground, or come ashore (strand themselves). Cowell.

DENARIATE. In old English law. As much land as is worth one penny *per annum.*

DENARII. An ancient general term for any sort of *petunia numerata,* or ready money. The French use the word *"denier"* in the same sense, -payer *de ses propres deniers.*

DENARII DE CARITATE. In English law. Customary oblations made to a cathedral church at Pentecost.

DENARII S. PETRI. (Commonly called "Peter's Pence.") An annual payment on St. Peter's feast of a penny from every family to the pope, during the time that the Roman Catholic religion was established in England.

DENARIUS. The chief silver coin among the Romans, worth 8d.; it was the seventh part of a Roman ounce. Also an English penny. The denarius was first coined five years before the first Punic war, B. C. 269. In later times a copper coin was called *"denarius."* • Smith, Dict. Antiq.

DENARIUS DEL (Lat. "God's penny.") Earnest money; money given as a token of the completion of a bargain. It differs from *arrhce* in this: that *arrhce* is a part of the consideration, while the *denarius Dei* is no part of it. The latter was given away in charity; whence the name. 1 Duvergnoy, n. 132; 3 Duvergnoy, n. 49; *Rupert. de Jur., Denier* a *Dieu.*

DENARIUS TERTIUS COMITATUS. In old English law. A third part or penny of the county paid to its earl, the other two parts being reserved to the crown.

DENIAL. A traverse in the pleading of one party of an allegation of fact set up by the other; a defense. See Flack v. O'Brien, 43 N.Y.S. 854, 19 Misc. 399; Mott v. Baxter, 29 Colo. 418, 68 P. 220. A deprivation, as the denial of a constitutional right, U. S. v. Carolene Products Co., Ill., 58 S.Ct. 778, 783, 304 U.S. 144, 82 L.Ed. 1234, or a denial of civil rights. State of New Jersey v. Weinberger, D.C.N.J., 38 F.2d 298, 302. A refusal or rejection, as the denial of a claim on a war risk policy by Veterans' Administration, U. S. v. Green, C.C.A.Tenn., 84 F.2d 449, 450; Morris v. U. S., C.C.A.Miss., 96 F.2d 731, 732, or of a claim for workmen's compensation. Commercial Casualty Ins. Co. v. Hilton, Tex.Civ.App., 55 S.W.2d 120, or of probation. People v. Lopez, 43 Cal. App.2d 854, 110 P.2d 140, 144. A disavowal. People v. Bell, 96 Cal.App. 503, 274 P. 393, 396; Massell v. Fourth Nat. Bank, 38 Ga.App. 601, 144 S.E. 806, 807.

General and Specific

In code pleading, a general denial is one which puts in issue all the material averments of the complaint or petition, and permits the defendant to prove any and all facts tending to negative those averments or any of them. Telford v. Iowa Guarantee Mortg. Corp., 58 S.D. 261, 235 N.W. 663, 665. A specific denial is a separate denial applicable to one particular allegation of the complaint. Gas Co. v. San Francisco, 9 Cal. 470; An answer

by way of a general denial is the equivalent of, and substitute for, the general issue under the common-law system of pleading. It gives to the defendant the same right to require the plaintiff to establish by proof all the material facts necessary to show his right to a recovery as was given by that plea. Kline v. Harris, 30 N.D. 421, 152 N.W. 687, 688, Ann.Cas.1917D, 1176.

DENIER. L. Fr. In old English law. Denial; refusal. *Denier* is when the rent (being demanded upon the land) is not paid. Finch, Law, b. 3, c. 5.

DENIER A DIEU. In French law. Earnest money; a sum of money given in token of the completion of a bargain. The phrase is a translation of the Latin *Denarius Dei, (q. v.).*

DENIZATION. The act of making one a denizen; the conferring of the privileges of citizenship upon an alien born. Cro. Jac. 540. See Denizen.

DENIZE. To make a man a denizen or citizen.

DENIZEN. In English law. A person who, being an alien born, has obtained, *ex donatione regis,* letters patent to make him an English subject,—a high and incommunicable branch of the royal prerogative. A denizen is in a kind of middle state between an alien and a natural-born subject, and partakes of the *status* of both of these. 1 Bl. Comm. 374; 7 Coke 6; Ex parte Gilroy, D.C. N.Y., 257 F. 110, 128.

The term is used to signify a person who, being an alien by birth, has obtained letters patent making him an English subject. The king may denize, but not naturalize, a man; the latter requiring the consent of parliament, as under the naturalization act, 1870, 33 & 34 Vict. c. 14. A denizen holds a position midway between an alien and a natural-born or naturalized subject, being able to take lands by purchase or devise, (which an alien could not until 1870 do,) but not able to take lands by descent, (which a natural-born or naturalized subject may do.) Brown.

The denizen becomes a British subject from the date of the letters while a naturalized person is placed in a position equivalent to that of a natural-born subject; Dicey, Confl.Laws 164.

The word is also used in this sense in South Carolina. See McClenaghan v. McClenaghan, 1 Strob.Eq., S.C., 319, 47 Am. Dec. 532.

In American law. A dweller; a stranger admitted to certain rights in a foreign country or as one who lives habitually in a country but is not a native born citizen; one holding a middle state between an alien and a natural born subject. United States ex rel. Zdunic v. Uhl, D.C. N.Y., 46 F.Supp. 688, 691. One who has some relation to the enemy nation which is not lost by the alien's presence within the United States. United States ex rel. Zdunic v. Uhl, C.C.A.N.Y., 137 F.2d 858, 861; United States ex rel. D'Esquiva v. Uhl, C.C.A.N.Y., 137 F.2d 903, 905.

Thus, one who lived and worked in Austria in 1938 at time Germany obtained control of Austrian government, and continued to live there until leaving for the United States in 1939, at which time he was issued a German passport, was a "denizen" of Germany, within Enemy Alien Act. United States ex rel. Zdunic v. Uhl, D.C.N.Y., 47 F.Supp. 520.

A denizen, in the primary, but obsolete, sense of the word, is a natural-born subject of a country. Co. Litt. 129a; Levy v. McCartee, 6 Pet. 102, 116, 8 L.Ed. 334.

DENMAN'S (LORD) ACT. An English statute, for the amendment of the law of evidence, (6 & 7 Vict. c. 85,) which provides that no person offered as a witness shall thereafter be excluded by reason of incapacity, from crime or interest, from giving evidence.

DENMAN'S (MR.) ACT. An English statute, for the amendment of procedure in criminal trials, (28 & 29 Vict. c. 18,) allowing counsel to sum up the evidence in criminal as in civil trials, provided the prisoner be defended by counsel.

DENOMBREMENT. In French feudal law. A minute or act drawn up, on the creation of a fief, containing a description of the fief, and all the rights and incidents belonging to it. Guyot, Inst. Feud. c. 3.

DENOMINATIO FIERI DEBET A DIGNIORIBUS. Denomination should be made from the more worthy.

DENOMINATION. The act of naming. A society of individuals known by the same name, usually a religious society.

DENOMINATIONAL. *adj.* Of, or pertaining to, a denomination; sectarian. Wesley Foundation at Seattle v. King County, 185 Wash. 12, 52 P.2d 1247, 1250; Constitutional Defense League v. Waters, 308 Pa. 150, 162 A. 216, 217.

DENOUNCE. To declare (an act or thing) to be a crime arid prescribe a punishment for it. State v. De Hart, 109 La. 570, 33 So. 605. The word is also used (not technically but popularly) as the equivalent of "accuse" or "inform against."

The term is frequently used in regard to treaties, indicating the act of one nation in giving notice to another nation of its intention to terminate an existing treaty between the two nations. The French *dënoncer* means to declare, to lodge an information against. Bellows, Fr. Diet,

DENOUNCEMENT.

In Mexican Mining Law

Denouncement is an application to the authorities for a grant of the right to work a mine, either on the ground of new discovery, or on the ground of forfeiture of the rights of a former owner, through abandonment or contravention of the mining law. Cent. Dict. See Castillero v. U. S., 2 Black, 109, 17 L.Ed. 360; Stewart v. King, 85 Or. 14, 166 P. 55, 56.

A "denouncement" is an application for the acquisition of land for mining purposes, under certain rules prescribed by Mexican laws. The application is called the "denouncement," and, when approved by the Mexican government, is called "concession" or "title," sometimes "patent." It is then a grant given by the government to use the land applied for, for the purpose of mining, and is called the "title." Winningham v. Dyo, Tex.Com.App., 48 S.W.2d 600, 603.

In Spanish and Mexican Law

A judicial proceeding for the forfeiture of land held by an alien.

Though real property might be acquired by an alien in fraud of the law,—that is, without observing its requirements,—he nevertheless retained his right and title to it, but was liable to be deprived of it by the proper proceeding of denouncement, which in its substantive characteristics was equivalent to the inquest of office found, at common law. De Merle v. Mathews, 26 Cal. 477.

The "denouncement of a new work" is a proceeding to obtain an order of court, in the nature of an injunction, against the construction of a new building or other work, which, if completed, would injuriously affect the plaintiff's property. Von Schmidt v. Huntington, 1 Cal. 55.

DENSHIRING OF LAND. (Otherwise called "burn-beating.") A method of improving land by casting parings of earth, turf, and stubble into heaps, which when dried are burned into ashes for a compost. Cowell.

DENTIFRICE. Any preparation used for cleansing the teeth. In re Edmand, Cust. & Pat.App., 39 F.2d 723.

DENTIST. One whose business it is to diagnose and treat imperfections or diseases of human teeth. People v. Hewson, 181 App.Div. 212, 168 N.Y.S. 104. Defined by the California Dental Act as any person who shall for remuneration perform an operation of any kind, or treat diseases of the human teeth. Jacobs v. Board of Dental Examiners of California, 189 Cal. 709, 209 P. 1006, 1007.

DENTISTRY. A special department of medical science, dealing with the treatment of the diseases, etc., of human teeth. Commonwealth v. Heller, 277 Pa. 539, 121 A. 558, 559. The term includes the supplying of dentures, bridges and other artificial substitutes to the user or prospective user thereof. Curtis v. State, 78 Okl.Cr. 282, 147 P.2d 465, 468. Winner v. Kadow, 373 Ill. 192, 25 N.E.2d 882, 883.

DENUMERATION. The act of present payment.

DENUNCIA DE OBRA NUEVA. In Spanish law. The denouncement of a new work; being a proceeding to restrain the erection of some new work, as, for instance, a building which may, if completed, injuriously affect the property of the complainant; it is of a character similar to the interdicts of possession. Escriche; Von Schmidt v. Huntington, 1 Cal. 63.

DENUNCIATION.

In the Civil Law

The act by which an individual informs a public officer, whose duty it is to prosecute offenders, that a crime has been committed. See 1 Bro.Civ. Law 447; Ayliffe, Parerg. 210; Pothier, Proc.Cr. sect. 2, § 2.

The giving of an information in the ecclesiastical courts by one who was not the accuser.

In Scotch Practice

The act by which a person is declared to be a rebel, who has disobeyed the charge. given on letters of horning. Bell.

DENUNTIATIO. In old English law. A public notice or summons. Bract. 202b.

DENY. To traverse. Perry v. Tumlin, 161 Ga. 392, 131 S.E. 70, 73. To refuse to grant a petition or protest. Safeway Stores v. Brown, Em.App., 138 F.2d 278, 280.

DEODAND. (L. Lat. *Deo dandum, a* thing to be given to God.) In English law. Any personal chattel which was the immediate occasion of the death of any reasonable creature, and which was forfeited to the crown to be applied to *pious* uses, and distributed in alms by the high almoner. 1 Hale, P.C. 419; Fleta, lib. 1, c. 25; 1 Bl.Comm. 300; 2 Steph.Comm. 365. See Parker-Harris Co. v. Tate, 135 Tenn. 509, 188 S.W. 54, L.R.A.1916F, 935.

DEOR HEDGE. In old English law. The hedge inclosing a deer park.

DEPART. To divide or separate actively. The departers of gold and silver were no more than the dividers and refiners of those metals. Cowell.

To go away, especially with reference to permanent visits. Pezzoni v. Pezzoni, 38 Cal.App. 209, 175 P. 801, 802. To withdraw from. Pomeroy v. National City Co., 209 Minn. 155, 296 N.W. 513, 517, 133 A.L.R. 766; City Co. of New York v. Stern, C.C.A.Minn., 110 F.2d 601, 603. To depart, as from the state, is not necessarily synonymous with the phrase "leave the state," or the phrase "absent from the state." Williams v. Williams, 57 Cal.App. 36, 206 P. 650, 652; Aronow v. Bishop, 112 Mont. 611, 120 P.2d 423, 424.

In Maritime Law

To leave a port; to be out of a port. To *depart* imports more than to *sail,* or set sail. A warranty in a policy that a vessel shall *depart* on or before a particular day is a warranty not only that she shall sail, but that she shall be *out of the port* on or before that day. 3 Maule & S. 461; 3 Kent Comm. 307, note. "To depart" does not mean merely to break ground, but fairly to set forward upon the voyage. Moir v. Assur. Co., 6 Taunt. 241; Young v. The Orpheus, 119 Mass. 185; The Helen Brown (D.C.) 28 F. 111.

In Pleading

To forsake or abandon the ground assumed in a former pleading, and assume a new one. See Departure.

DEPARTMENT. One of the territorial divisions of a country. The term is chiefly used in this sense in France, where the division of the country into departments is somewhat analogous, both territorially and for governmental purposes, to the division of an American state into counties. The United States have been divided into military de-

partments, including certain portions of the country. Parker v. U. S., 1 Pet. 293, 7 L.Ed. 150.

Generally, a branch or division of governmental administration. Glendinning v. Curry, 153 Fla. 398, 14 So.2d 794, 802.

One of the divisions of the executive branch of government. Used in this sense in the United States, where each department is charged with a specific class of duties, and comprises an organized staff of officials; *e. g.,* the department of state, department of war, etc.

With reference to state or municipal administration, a "bureau" is merely a division of a department. In re McLaughlin, 210 N.Y.S. 68, 72, 124 Misc. 766.

Also, a division of a business, or of something comparable thereto. See State v. Arkansas Lumber Co., 126 Ark. 107, 189 S.W. 671; U. S. v. Elgin, J'. & E. Ry. Co., Ill., 56 S.Ct. 841, 298 U.S. 492, 80 L.Ed. 1300.

DEPARTMENT STORE. Generally, a store in which a variety of merchandise is arranged in or offered for sale from several departments or sections, but the term cannot be applied with any certainty to a particular business and is too indefinite to be used as a classification for the purpose of taxation. Barker Bros. v. City of Los Angeles, 10 Cal.2d 603, 76 P.2d 97.

DEPARTURE. A deviation or divergence, from a standard rule or measurement. Hamilton Mfg. Co. v. Tubbs Mfg. Co., D.C.Mich., 216 F. 401, 409. From a permitted use of vehicle or route, Reddy-Waldhauer-Maffett Co. v. Spivey, 53 Ga.App. 117, 185 S.E. 147, 148. Jeffries v. Jodawelky, 304 Mich. 421, 8 N.W.2d 121, 122. From employment or work, United Employers Casualty Co. v. Barker, Tex.Civ.App., 148 S.W.2d 260, 263; Hartford Accident & Indemnity Co. v. Cardillo, 112 F.2d 11, 15, 72 App.D.C. 52.

A variance between pleading and proof. Kintner v. U. S., C.C.A.Colo., 71 F.2d 961, 962.

### In Maritime Law

A deviation from the course prescribed in the policy of insurance.

### In Pleading

The statement of matter in a replication, rejoinder, or subsequent pleading, as a cause of action or defense, which is not pursuant to the previous pleading of the same party, and which does not support and fortify it. 2 Williams, Saund. 84a, note 1; 2 Wils. 98; Co.Litt. 304a; Hanna v. Royce, 119 Or. 450, 249 P. 173, 175.

A departure occurs when party departs from cause or defense first made and has recourse to another. Livingston v. Malever, 103 Fla. 200, 137 So. 113, 118; Clonts *v.* State, 19 Ala.App. 130, 95 So. 562; Northwestern Nat. Life Ins. Co. v. Ward, 56 Okl. 188, 155 P. 524, 525; Burrell v. Masters, 65 Colo. 310, 176 P. 316, 317. Or, in other words, when the second pleading contains matter not pursuant to the former, and which does not support and fortify It. Hence a departure obviously can never take place till the replication. Steph.Pl. 410. Each subsequent pleading must pursue or support the former one; i. *e.,* the replication must support the declaration, and the rejoinder the plea, without departing out of it. 3 Bl.Comm. 310. An amendment to *a* petition changing the cause of action is not, technically, a "departure." King v. Milner, 63 Colo. 407, 167 P. 957, 960; MacGerry v. Rodgers, 144 Wash. 375, 258 P. 314, 315.

DEPARTURE IN DESPITE OF COURT. In old English practice. The tenant in a real action, having once appeared, was considered as constructively present in court until again called upon. Hence if, upon being demanded, he failed to appear, he was said to have "departed in despite *[i. e.,* contempt] of the court." Co.Litt. 139a; 8 Co. 62a; 1 Rolle, Abr. 583; Metc.Yelv. 211.

DEPASTURE. In old English law. To pasture. "If a man *depastures* unprofitable cattle in his ground." Bunb. 1, case 1.

DEPECULATION. A robbing of the prince or commonwealth; an embezzling of the public treasure.

DEPENDABLE, *adj.* Trustworthy or reliable, Anderson v. Wyoming Development Co., 60 Wyo. 417, 154 P.2d 318, 340; Evidence, Taylor v. Latimer, D.C.Mo., 47 F.Supp. 236, 238.

DEPENDENCE. A state of looking to another for support, maintenance, food, clothing, comfort and protection of a home and care. Central Life Assur. Soc. (Mutual) v. Gray, Tex., 32 S.W.2d 259, 261; Soderstrom v. Missouri Pac.. R. Co., Mo.App., 141 S.W.2d 73, 79.

DEPENDENCY. A territory distinct from the country in which the supreme sovereign power resides, but belonging rightfully to it, and subject to the laws and regulations which the sovereign may think proper to prescribe. U. S'. v. The Nancy, 3 Wash.C.C. 286, Fed.Cas.No.15,854; Posadas v. National City Bank of N. Y., Phil.Islands, 56 S.Ct. 349, 350, 296 U.S. 497, 80 L.Ed. 351.

It differs from a *colony,* because it is not settled by the citizens of the sovereign or mother state; and from *possession,* because it is held by other title than that of mere conquest.

A relation between two persons, where one is sustained by another or looks to or relies on aid of another for support or for reasonable necessaries consistent with dependent's position in life. Peterson v. Industrial Commission, 331 Ill. 254, 162 N.E. 846, 847.

DEPENDENT, n. One who derives support from another; Milkovich v. Industrial Comm., 91 Utah, 498, 64 P.2d 1290, 1293; Texas Employers Ins. Ass'n v. Arnold, Tex.Civ.App., 62 S.W.2d 609, 611; not merely persons who derive a benefit from the earnings of the deceased; [1899] 1 Q.B. 1005; Havey v. Erie R. Co., 88 N.J.Law, 684, 96 A. 995, 996. One who depends on or is sustained by another, or who relies on another for support or favor. King v. Illinois Steel Corporation, 92 Ind. App. 456, 176 N.E. 161, 162.

DEPENDENT, *adj.* Deriving existence, support, or direction from another; conditioned, in respect to force or obligation, upon an extraneous act or fact.

Under a statute relating to dependent children, "dependent" is synonymous with "neglected," but not with "delinquent." People v. Ellis, 185 Ill.App. 417, 420; Durres v. Deckard, 105 Ind.App. 674, 17 N.E.2d 481, 484.

Under a California juvenile act, a "dependent person" is one under the age of 21 years who is in danger of growing up to lead an idle, dissolute, or immoral life. People v. Cruse, 24 Cal.App. 497, 141 P. 936.

Dependent conditions. Mutual covenants which go to the whole consideration on both sides. Long v. Addix, 184 Ala. 236, 63 So. 982, 984; Palmer v. Fox, 274 Mich. 252, 264 N.W. 361, 104 A.L.R. 1057.

Dependent contract. One which depends or is conditional upon another. One which it is not the duty of the contractor to perform until some obligation contained in the same agreement has been performed by the other party. Ham. Parties, 17, 29, 30, 109.

Dependent covenant. See Covenant.

Dependent promise. One which it is not the duty of the promisor to perform until some obligation contained in the same agreement has been performed by the other party. Hamm.Partn. 17, 29, 30, 109; Harr.Const. 152.

DEPENDENT RELATIVE REVOCATION. The doctrine which regards as mutually dependent the acts of one destroying a will and thereupon substituting another instrument for distribution of estate, when both acts are result of one plan, so that, if second act, through incompleteness or other defect, fails to accomplish its intended purpose, and it thereby becomes evident that testator was misled when he destroyed his will, act of destruction is regarded as bereft of intent of revocation and way for probate of destroyed will is opened. Flanders v. White, 142 Or. 375, 18 P.2d 823, 827; In re Nelson's Estate, 183 Minn. 295, 236 N.W. 459, 46L

DEPENDING. In practice. Pending or undetermined; in progress. See 5 Coke, 47.

Under a statute, 28 U.S.C.A. § 1781, note, permitting the taking of testimony by deposition de bene esse, a cause is "depending" from the time of the issuance of the original writ. Oklahoma Gas & Electric Co. v. Bates Expanded Steel Truss Co., D.C.Del., 296 F. 281, 283.

In patent law. A convenient means of saying that the parts of a device were so attached as to have a right-angle relationship to each other, not a gravitational hanging of one part upon another. Alemite Mfg. Corporation v. Rogers Products Co., C.C.A.N.J., 42 F.2d 648, 651.

DEPESAS. In Spanish-American law. Spaces of ground in towns reserved for commons or public pasturage. 12 Pet. 443, note, 9 L.Ed. 1150.

DEPLETABLE ECONOMIC INTEREST. The interest in mineral land which is subject to depletion by the removal of the minerals by operation of an oil well, mine, or the like. 26 U.S.C.A.Int. Rev.Code § 114. Spalding v. U. S., C.C.A.Cal., 97 F.2d 697, 700; U. S. v. Spalding, C.CA.Cal.,, 97 F.2d 701, 704.

DEPLETE. To reduce or lessen, as by use, exhaustion, or waste. McKnight v. U. S., C.C.A.Cal., 78 F.2d 931, 933.

DEPLETION. An emptying, exhausting or wasting of assets. Arkansas-Louisiana Gas Co. v. City of Texarkana, D.C.Ark., 17 F.Supp. 447, 460. For tax purposes, a return of capital, not a special bonus for enterprise. Untermyer v. Commissioner of Internal Revenue, C.C.A., 59 F.2d 1004. A reduction during taxable year of oil, gas or other mineral deposits or reserves as result of production. Darby-Lynde Co. v. Alexander, C.C.A.Okl., 51 F.2d 56.

DEPOLYMERIZATION. In connection with the devulcanizing of vulcanized rubber, the act of breaking into smaller aggregations the rubber molecules, which consist of hydrogen and carbon, thus rendering the waste rubber plastic. Philadelphia Rubber Works Co. v. United States Rubber Reclaiming Works, D.C.N.Y., 225 F. 789, 791.

DEPONE. In Scotch practice. To depose; to make oath in writing.

DEPONENT. In practice. One who *deposes* (that is, testifies or makes oath, now in *writing)* to the truth of certain facts; one who gives under oath testimony which is reduced to writing; one who makes oath to a written statement. The party making an affidavit is generally so called, though in the United States the term "affiant" is also commonly applied to such party, the terms, when used with reference to one making an affidavit, are synonymous. Walden v. Crego's Estate, 238 Mich. 564, 285 N.W. 457, 461.

The word "depone," from which is derived "deponent," has relation to the mode in which the oath is administered, (by the witness placing his hand upon the book of the holy evangelists,) and not as to whether the testimony is delivered orally or reduced to writing. "Deponent" is included in the term "witness," but "witness" is more general. Bliss v. Shuman, 47 Me. 248.

DEPONER. In old Scotch practice. A deponent. 3 How. State Tr. 695.

DEPOPULATIO AGRORUM. In old English law. The crime of destroying, ravaging, or laying waste a country. 2 Hale, P. C. 333; 4 Bl.Comm. 373.

DEPOPULATION. In old English law. A species of waste by which the population of the kingdom was diminished. Depopulation of houses was a public offense. 12 Coke, 30, 31.

DEPORTATIO. Lat. In the civil law. A kind of banishment, where a condemned person was sent or carried away to some foreign country, usually to an island, *(in insulam deportatur,)* and thus taken out of the number of Roman citizens,

DEPORTATION. Banishment to a foreign country, attended with confiscation of property and deprivation of civil rights. A punishment derived from the *deportatio (q. v.)* of the Roman law, and still in use in France.

### In American Law

The removal or sending back of an alien to the country from which he came, the removal from the country of an alien considered inimical to public welfare; the removal of an alien out of the country simply because his presence is deemed inconsistent with the public welfare, and without any punishment being imposed or contemplated. Yonejiro Nakasuji v. Seager, D.C.Cal., 3 F.Supp. 410, 413.

"The removal of an alien out of the country, simply because his presence is deemed inconsistent with the public welfare, and without any punishment being imposed or contemplated, either under the laws of the country out of which he is sent, or under those of the country to which he is. taken." It differs from *transportation,* which is by way of punishment of one convicted of an offence against the laws of the country; and from *extradition (q. v.),* which is the surrender to another country of one accused of an offence against its laws, there to be tried, and, if found guilty, punished. Fong Yue Ting v. U. S., 149 U.S. 698, 13 S.Ct. 1016, 37 L. Ed. 905.

"Deportation," as distinguished from "exclusion," is depriving a person already in the United States of a privilege which he, at least at the time, is enjoying ; whereas "exclusion" is the denial of entry, and does not deprive one of any liberties he had theretofore enjoyed. Ex parte Domingo Corypus, D.C., 6 F.2d 336.

### In Roman Law

A perpetual banishment, depriving the banished of his rights as a citizen; it differed from relegation *(q. v.)* and exile, *(q. v.)* 1 Brown, Civil & Adm. Law, 125, note; Inst. 1, 12, 1, and 2; Dig. 48, 22, 14, 1,

DEPOSE. To deprive an individual of a public employment or office against his will. Wolfflus, Inst. § 1063. The term is usually applied to the deprivation of all authority of a sovereign.

### In Modern Usage

To make a deposition; to give evidence in the shape of a deposition; to make statements which are written down and sworn to; to give testimony which is reduced to writing by a duly-qualified officer and sworn to by the deponent. To say (in a deposition) under oath. Webb v. Iowa-Nebraska Coal Co., 198 Iowa 776, 200 N.W. 225, 226. To bear witness, to state of oath, or give testimony. Favello v. Bank of America Nat. T. & S. Ass'n, 24 Cal.App.2d 342, 74 P.2d 1057, 1059.

### In Practice

In ancient usage, to testify as a witness; to give evidence under oath.

DEPOSIT, *v.* To commit to custody, or to lay down; to place; to put; to let fall (as sediment) ; Jefferson County ex rel. Grauman v. Jefferson County Fiscal Court, 273 Ky. 674, 117 S.W.2d 918, 924; to lodge for safe-keeping or as a pledge, to intrust to the care of another. White v. Greenlee, 330 Mo. 135, 49 S.W.2d 132, 134.

DEPOSIT, n. A naked bailment of goods to be kept for the depositor without reward, and to be returned when he shall require it. Jones, Bailm. 36, 117; Rozelle v. Rhodes, 116 Pa. 129, 9 Atl. 160, 2 Am.St.Rep. 591; Occidental Life Ins. Co. v. Rogan, C,C.A.Cal., 141 F.2d 1011, 1012.

A bailment of goods to be kept by the bailee without reward, and delivered according to the object or purpose of the original trust. Story, Bailm. § 41; Elbert Sales Co. v. Granite City Bank, 55 Ga.App. 835, 192 S.E. 66, 67.

In general, an act by which a person receives the property of another, binding himself to preserve it and return it in kind. Henry Rose Mercantile & Mfg. Co. v. Stearns, 159 La. 957, 106 So. 455, 458.

The delivery of chattels by one person to another to keep for the use of the bailor.

The giving of the possession of personal property by one person to another, with his consent, to keep for the use and benefit of the first or of a third person. Moumal v. Parkhurst, 89 Or. 248, 173 P. 669, 671.

Something intrusted to the care of another, either for a permanent or a temporary disposition. Davidson v. U. S., C.C.A.Pa., 292 F. 750, 751, aff. U. S. v. Davidson, D.C.Pa., 285 F. 661.

Also, money lodged with a person as an earnest or security for the performance of some contract, to be forfeited if the depositor fails in his undertaking. It may be deemed to be part payment, and to that extent may constitute the purchaser the actual owner of the estate. Larson v. Metcalf, 201 Iowa, 1208, 207 N.W. 382, 384, 45 A.L.R. 344.

#### *Classification*

According to the classification of the civil law, deposits are of the following several sorts : (1) *Necessary, made* upon some sudden emergency, and from some pressing necessity; as, for instance, in case of a fire, a shipwreck, or other overwhelming calamity, when property is confided to any person whom the depositor may meet without proper opportunity for reflection or choice, and thence it is called *"miserabile depositum."* (2) *Voluntary,* which arises from the mere consent and agreement of the parties. Dig. 16, 3, 2; Story, Bailm. § 44. The common law has made no such division.

There is another class of deposits called "involuntary," which may be without the assent or even knowledge of the depositor ; as lumber, etc., left upon another's land by the subsidence of a flood. An "involuntary" deposit is one made by the accidental leaving or placing of personal property in the possession of any person without negligence on the part of the owner. Copelin v. Berlin Dyeworks Laundry Co., 168 Cal. 715, 144 P. 961, 963, L.R.A.1915C, 712.

The civilians again divide deposits into "simple deposits," made by one or more persons having a common interest, . and "sequestrations'," made by one or more persons, each of whom has a different and adverse interest in controversy touching it; and these last are of two sorts,- "conventional," or such as are made by the mere agreement of the parties without any judicial act; and "judicial," or such as are made by order of a court in the course of some proceeding. Thus, under Louisiana statutes, it is said that the difference between "sequestration" and "deposit" is that the former may have for its object both movable and immovable property, while the latter is confined to movables. Raines v. Dunson, 145 La. 1011, 83 So. 224, 226.

There is another class of deposits called "irregular," as when a person, having a sum of money which he does not think safe in his own hands, confides it to another, who is to return to him, not the same money, but a like sum when he shall demand it. Poth. du Depot. 82, 83; Story, Bailm. § 84. A *regular* deposit is a strict or special' deposit; a deposit which must be returned in *specie; e.,* the thing deposited must be returned. A *quasi* deposit is a kind of implied or involuntary deposit, which takes place where a party comes lawfully to the possession of another person's property, by finding it. Story, Bailm. § 85. Particularly with reference to money, deposits are also classed as *general* or *spacial.* A general deposit is where the money deposited is not itself to be returned, but an equivalent in money (that is, a like sum) is to be returned. It is equivalent to a loan, and the money deposited becomes the prop-

erty of the depositary. City of Canby v. Bank of Canby, 192 Minn. 571, 257 N.W. 520.

A special deposit is a deposit in which the identical thing deposited is to be returned to the depositor. The particular object of this kind of deposit is safekeeping. Koetting v. State, 88 Wis. 502, 60 N.W. 822. Marine Bank v. Fulton Bank, 69 U.S. 252, 2 Wall. 252, 17 L.Ed. 785. In banking law, this kind of deposit is contrasted with a "general" deposit, as above; but in the civil law it is the antithesis of an "irregular" deposit. A *gratuitous* or *naked* deposit is a bailment of goods to be kept for the depositor without hire or reward on either side, or one for which the depositary receives no consideration beyond the mere possession of the thing deposited. Properly and originally, all deposits are of this description; for according to the Roman law, a bailment of goods for which hire or a price is to be paid, is not called "depositum" but "locatio." If the owner of the property pays for its custody or care, it is a "locatio custodies;" if, on the other hand, the bailee pays for the use of it, it is "locatio rei." (See Locatio.) But in the modern law of those states which have been influenced by the Roman jurisprudence, a gratuitous or naked deposit is distinguished from a "deposit for hire," in which the bailee is to be paid for his services in keeping the article. There is also a *specific* deposit, which exists where money or property is given to a bank for some specific and particular purpose, as a note for collection, money to pay a particular note, or property for some other specific purpose. Officer v. Officer, 120 Iowa 389, 94 N.W. 947, 98 Am. St. 365.

### In Banking Law

The act of placing or lodging money in the custody of a bank or banker, for safety or convenience, to be withdrawn at the will of the depositor or under rules and regulations agreed on. Also, the money so deposited, or the credit which the depositor receives for it. State Banking Board v. James, Tex.Civ.App., 264 S.W. 145, 149.

"Deposit," according to its commonly accepted and generally understood meaning among bankers and by the public, includes not only deposits payable on demand and subject to check, but deposits not subject ,to check, for which certificates, whether interest-bearing or not, may be issued, payable on demand, or on certain notice, or at a fixed future time. Jones v. O'Brien, 58 S.D. 213, 235 N. W. 654, 659.

### In Insurance Law

The delivery by a life insurance company of securities to state commissioner of insurance as required by statutes. Central Life Assur. Soc. v. Birmingham, D.C.Iowa, 48 F.Supp. 863, 865.

### In Mining

A quantity of ore or mineral substances occurring naturally in the earth; as, a deposit of gold, oil, etc. See Colorado Gold Dredging Co. v. Stearns-Roger Mfg. Co., 60 Colo. 412, 153 P. 765.

### In General

Deposit account. An account of sums lodged with a bank not to be drawn upon by checks, and usually not to be withdrawn except after a fixed notice.

Deposit company. A company whose business is the safe-keeping of securities or other valuables deposited in boxes or safes in its building which are leased to the depositors.

Deposit of title-deeds. A method of pledging real property as security for a loan, by placing the title-deeds of the land in the keeping of the lender as pledgee.

Deposit slip. An acknowledgment that the amount named therein has been received by the bank; it is a receipt intended to furnish evidence as between the depositor and depositary that on a given date there was deposited the sum named therein, the time of deposit, and amount deposited, being also shown. In re Ruskay, C.C.A.N.Y., 5 F.2d 143, 147.

DEPOSITARY. The party receiving a deposit; one with whom anything is lodged in trust, as "depository" is the place where it is put. A trustee; fiduciary; one to whom goods are bailed to be held without recompense. Stand. Diet. The obligation on the part of the depositary is that he keep the thing with reasonable care, and, upon request, restore it to the depositor, or otherwise deliver it, according to the original trust. Brunner v. Edwards, 337 Pa. 513, 12 A.2d 36, 37.

DEPOSITATION. In Scotch law. Deposit or *de positum,* the species of bailment so called. Bell.

DEPOSITION. The testimony of a witness taken upon interrogatories, not in open court, but in pursuance of a commission to take testimony issued by a court, or under a general law on the subject, and reduced to writing and duly authenticated, and intended to be used upon the trial of an action in court. It is sometimes used as synonymous with "affidavit" or "oath," but its technical meaning does not include such terms. State v. Lord, 42 N.M. 638, 84 P.2d 80, 94.

A written declaration under oath, made upon notice to the adverse party for the purpose of enabling him to attend and cross-examine; or upon written interrogatories. N. *S.* Sherman Machine & Iron Works v. R. D. Cole Mfg. Co., 51 Okl. 353, 151 P. 1181, 1182. It is the giving of notice to the adverse party which especially distinguishes a deposition from an affidavit. Zinner v. Louis Meyers & Son, 181 Misc. 344, 43 N.Y.S.2d 319, 320.

The term sometimes is used in a special sense to denote a statement made orally by a person on oath before an examiner, commissioner, or officer of the court, (but not in open court,) and taken down in writing by the examiner or under his direction. Sweet.

In Ecclesiastical law. The act of depriving a clergyman, by a competent tribunal, of his clerical orders, to punish him for some offense and to prevent his acting in future in his clerical character. Ayl. Par. 206.

DEPOSITION DE BENE ESSE. Testimony to be read at the trial, so far as relevant and competent, as though the witness were present in court. Milprint, Inc., v. Macleod Laboratories, 127 N.J.L. 333, 22 A.2d 566, 567.

DEPOSITO. In Spanish law. Deposit; the species of bailment so called. Schm. Civil Law, 193.

A real contract by which one person confides to the custody of another an object on the condition

that it shall be returned to him whenever he shall require it.

DEPOSITOR. One who makes a deposit.

In banking law, one who delivers and leaves money with a bank on his order or subject to check. Lummus Cotton Gin Co. v. Walker, 195 Ala. 552, 70 So. 754, 756; Austin v. Avant, Tex. Civ.App., 277 S.W. 409, 410.

DEPOSITORY. The place where a deposit *(q. v.)* is placed and kept.

Sometimes, also, a depositary; one with whom something is deposited. Jones v. Marrs, 114 Tex. 62, 263 S.W. 570, 573.

United States depositories. Banks selected and designated to receive deposits of the public funds of the United States.

DEPOSITUM. Lat. In the civil law. One of the forms of the contract of bailment, being a naked bailment of goods to be kept for the use of the bailor without reward. Coe v. Ricker, 214 Mass. 212, 101 N.E. 76, 78, 45 L.R.A.,N.S., 30, Ann.Cas. 1914B, 1178. See Deposit.

One of the four real contracts specified by Justinian, and having the following characteristics : (1) The depositary or depositee is not liable for negligence, however extreme, but only for fraud, dolus; (2) the property remains in the depositor, the depositary having only the possession. *Precarium* and *sequestre* were two varieties of the *depositum.*

DEPOT. A railroad freight or passenger station; a place on the line of a railroad where passengers may enter and leave the trains and where freight is deposited for delivery; a place where the carrier is accustomed to receive merchandise, deposit it, and keep it ready for transportation or delivery. Missouri Pac. R. Co. v. Williamson, 195 Ark. 487, 112 S.W.2d 957, 958. Chesapeake & 0. Ry. Co. v. Ricks, 146 Va. 10, 135 S.E. 685, 688.

A place for the deposit of goods; a warehouse, or a storehouse. Weyman v. City of Newport, 153 Ky. 487, 156 S.W. lop, 111.

A place where military supplies or stores are kept or troops assembled. U. S. v. Caldwell, 19 Wall. 264, 22 L.Ed. 114.

—Depot grounds. Station grounds. Atchison, T. & S. F. Ry. Co. v. McCall, 48 Okl. 602, 150 P. 173, 174. The place where passengers get off and on trains, where goods are loaded and unloaded, and all grounds necessary, convenient, and actually used for such purposes by the public and by the railway company, including the place where cars are switched and trains made up, also where tracks are used for storing cars, and where the public require open and free access to the railroad for the purpose of such business. Prince v. Chicago & N. W. Ry. Co., 165 Wis. 212, 161 N.W. 765, 766.

DEPOT. In French law. The *depositum* of the Roman and the deposit of the English law. It is of two kinds, being either (1) *depot* simply so called, and which may be either voluntary or necessary, and (2) *sdquestre,* which is a deposit made either under an agreement of the parties, and to abide the event of pending litigation regarding it, or by virtue of the direction of the court or a judge, pending litigation regarding it. Brown; Civ.Code La. 2926.

DEPRAVE. To defame; vilify; exhibit contempt for. In England it is a criminal offense to "deprave" the Lord's Supper or the Book of Common Prayer. Steph.Crim.Dig. 99.

DEPRAVED MIND. An inherent deficiency of moral sense and rectitude, equivalent to statutory phrase "depravity of heart" defined as highest grade of malice. Ramsey v. State, 114 Fla. 766, 154 So. 855.

A mind which may become inflamed by liquor and passion to such a degreP that it ceases to care for human life and safety is a "depraved mind." State v. Weltz, 155 Minn. 143, 193 N.W. 42, 44.

DEPRECIATION. A fall in value; reduction of worth. New York Life Ins. Co. v. Anderson, C.C.A. N.Y., 263 F. 527, 529. The deterioration, or the loss or lessening in value, arising from age, use, and improvements, due to better methods. Boston & 'A. R. Co. v. New York Cent. R. Co., 256 Mass. 600, 153 N.E. 19, 23; Miles v. People's Telephone Co., 166 Wis. 94, 163 N.W. 652, 655.

DEPRECIATION RESERVE. An account kept on the books, as of a public utility, to offset the depreciation of the property due to time and use. People ex rel. Adirondack Power & Light Corporation v. Public Service Commission, 193 N.Y.S. 186, 191, 200 App.Div. 268. It does not represent the actual depreciation of its properties which is to be deducted from the reproduction cost new to ascertain the present value for rate purposes; but only what observation and experience suggest as likely to happen, with a margin over. Southern Bell Telephone & Telegraph Co. v. Railroad Commission of South Carolina, D.C.S.C., 5 F.2d 77, 96.

DEPREDATION. The act of plundering, robbing, or pillaging. Deal v. U. S., 274 U.S. 277, 47 S.Ct. 613, 615, 71 L.Ed. 1045.

In French law. Pillage, waste, or spoliation of goods, particularly of the estate of a decedent.

DEPRESSION. A period of economic stress; deflation; panic. Trust Co. of N. J. v. Jefferson Trust Co., 14 N.J.Misc. 656, 186 A. 732; McCuiston v. Haggard, 21 Tenn.App. 277, 109 S.W.2d 413.

A hole or hollow. Rice v. Kansas City, Mo.App., 16 S.W.2d 659, 661.

DEPRIVATION. In English ecclesiastical law. The taking away from a clergyman of his benefice or other spiritual promotion or dignity, either by sentence declaratory in the proper court for fit and sufficient causes or in pursuance of divers penal statutes which declare the benefice void for some nonfeasance or neglect, or some malfeasance or crime. 3 Steph.Comm. 87, 88; Burn, Ecc.Law, tit. "Deprivation." See Ayliffe, Parerg. 206; 1 Bla. Comm. 393. See Degradation.

In American law. A taking away; confiscation; as the deprivation of a constitutional right. Thus

a taking of property without due process of law; Sundlun v. Zoning Board of Review of City of Pawtucket, 50 R.I. 108, 145 A. 451, 454; or of liberty. Lynch v. City of Muskogee, D.C.Okl., 47 F.Supp. 589, 592.

DEPRIVE. To take. The term has this meaning in a constitutional provision that no person shall be *"deprived* of his property" without due process of law, and denotes a taking altogether, a seizure, a direct appropriation, dispossession of the owner. Brown v. City of Atlanta, 167 Ga. 416, 145 S.E. 855, 857. It connotes want of consent. Sandel v. State, 104 S.E. 567, 571, 115 S.C. 168, 13 A.L.R. 1268.

DEPUTIZE. To appoint a deputy; to appoint or commission one to act as deputy to an officer. In a general sense, the term is descriptive of empowering one person to act for another in any capacity or relation, but in law it is almost always restricted to the substitution of a person appointed to act for an officer of the law.

DEPUTY. A substitute; a person duly authorized by an officer to exercise some or all of the functions pertaining to the office, in the place and stead of the latter. Byrnes v. Windels, 265 N.Y. 403, 193 N.E. 248, 249. One appointed to substitute for another with power to act for him in his name or behalf. Saxby v. Sonnemann, 149 N.E. 526, 528, 318 Ill. 600; Waggoner v. State, 183 Miss. 510, 184 So. 633, 634.

A deputy differs from an assignee, in that an assignee has an interest in the office itself, and does all things in his own name, for whom his grantor shall not answer, except in special cases; but a deputy has not any Interest in the office, and is only the shadow of the officer in whose name he acts. And there is a distinction in doing an act by an agent and by a deputy. An agent can only bind his principal when he does the act in the name of the principal. But a deputy may do the act and sign his own name, and it binds his principal; for a deputy has, in law, the whole power of his principal. Wharton.

Deputy consul. See Consul.

Deputy lieutenant. The deputy of a lord lieutenant of a county in England.

Deputy sheriff. One appointed to act in the place and stead of the sheriff in the official business of the latter's office. A *general* deputy (sometimes called "undersheriff"; see Shirran v. Dallas, 21 Cal.App. 405, 132 P. 454, 458; Delfelder v. Teton Land & Investment Co., 46 Wyo. 142, 24 P.2d 702, is one who, by virtue of his appointment, has authority to execute all the ordinary duties of the office of sheriff, and who executes process without any special authority from his principal. A *special* deputy, who is an officer *pro hac vice,* is one appointed for a special occasion or a special service, as, to serve a particular writ or to assist in keeping the peace when a riot or tumult is expected or in progress. He acts under a specific and not a general appointment and authority. Allen v. Smith, 12 N.J.Law, 162; Wilson v. Russell, 4 Dak. 376, 31 N.W. 645.

Deputy steward. A steward of a manor may depute or authorize another to hold a court; and the acts done in a court so holden will be as legal as if the court had been holden by the chief stew• and in person. So an under steward or deputy may authorize another as subdeputy, *pro hac vice,* to hold a court for him; such limited authority not being inconsistent with the rule *delegatus non potest delegare.* Wharton.

Special deputy. One appointed to exercise some special function or power of the official or person for whom he is appointed. Saxby v. Sonnemann, 318 Ill. 600, 149 N.E. 526, 528.

DERAIGN, Apparently, literally, to confound, and disorder, or to turn out of course, or displace; as deraignment or departure out of religion, in St. 31 Hen. VIII. c. 6. In the common law, the word is used generally in the sense of to prove; viz., to deraign a right, deraign the warranty, etc. Glanv. lib. 2, c. 6; Fitzh.Nat.Brev. 146. Perhaps this word "deraign," and the word "deraignment," derived from it, may be used in the sense of to prove and a proving, by disproving of what is asserted in opposition to truth and fact. Jacob. It is used as referring to a decree "which deraigns his title from a false source." Paxson v. Brown, 61 F. 874, 884, 10 C.C.A. 135.

DERAILER. A small but heavy iron device attached to a rail which opens and closes over the rail by a lever, so as to derail or turn off the track-cars approaching the closed derailer from the expected direction. Brady v. Southern Ry. Co., 64 S.Ct. 232, 234, 320 U.S. 476, 88 L.Ed. 239.

DERAILMENT. The act of going off or the state of being off the rails of a railroad. Graham v. Insurance Co. of North America, 220 Mass. 230, 107 N.E. 915.

DERANGEMENT. See Insanity.

DERECHO. In Spanish law. Law or right. *Derecho comun,* common law. The civil law is so called. A right. *Derechos,* rights. Also, specifically, an impost laid upon goods or provisions, or upon persons or lands, by way of tax or con. tribution. Noe v. Card, 14 Cal. 576, 608.

DERELICT. Forsaken; abandoned; deserted; cast away.

Personal property abandoned or thrown away by the owner in such manner as to indicate that hp intends to make no further claim thereto. 2 Bl.Comm. 9; 2 Reeve, Eng.Law, 9; Thompson v. One Anchor and Two Anchor Chains,, D.C.Wis., 221 F. 770, 772.

Land left uncovered by the receding of water from its former bed. 2 Rolle, Abr. 170; 2 Bl, Comm. 262; 1 Crabb, Real Prop. 109.

In Maritime Law

A boat or vessel found entirely deserted or abandoned on the sea without hope or intention of recovery or return by the master or crew, whether resulting from wreck, accident, necessity, or voluntary abandonment. U. S. v. Stone, C.C.Tenn., 8 F. 232-243; Cromwell v. The Island City, 1 Black

121, 17 L.Ed. 70; The Hyderabad, D.C.Wis., 11 F. 749-754; The No. 105, Belcher Oil Co. v. Griffin, C.C.A.Fla., 97 F.2d 425, 426; Mengel Box Co. v. Joest, 127 Miss. 461, 90 So. 161, 163.

Quasi Derelict

When a vessel, without being abandoned, is no longer under the control or direction of those on board, (as where part of the crew are dead, and the remainder are physically and mentally incapable of providing for their own safety,) she is said to be *quasi derelict.* Sturtevant v. Nicholaus, 1 Newb.Adm. 449, Fed.Cas.No.13,578. When the crew have left their vessel temporarily, with the intention of returning to resume possession, she is not technically a derelict, but is what may be termed a "quasi derelict." The Alcazar, D.C. N.C., 227 F. 633, 650.

DERELICTION. The gaining of land from the water, in consequence of the sea shrinking back below the usual water mark; the opposite of alluvion *(q.* v.) Dyer, 326b; 2 Bl.Comm. 262; 1 Steph.Comm. 419; Linthicum v. Coan, 64 Md. 439, 2 A. 826, 54 Am.Rep. 775; Also, land left dry by running water retiring imperceptibly from one of its shores and encroaching on the other. Slattery v. Arkansas Natural Gas Co., 138 La. 793, 70 So. 806. See Reliction; Accretion.

In the Civil Law

The voluntary abandonment of goods by the owner, without the hope or the purpose of retuning to the possession. Jones v. Nunn, 12 Ga. 473; Livermore v. White, 74 Me. 456, 43 Am.Rep. 600.

"Dereliction" or "renunciation" of property at sea as well as on land requires both the intention to abandon and external action. The No. 105, C.C.A.Fla., 97 F.2d 425, 426.

Derivativa potestas non potest esse major primitiva. Noy, Max.; Wing.Max. 66. The derivative power cannot be greater than the primitive. The power which is derived cannot be greater than that from which it is derived. Finch.Law, b. 1, c. 3, p. 11.

DERIVATIVE. Coming from another; taken from something preceding; secondary; that which has not its origin in itself, but owes its existence to something foregoing. Anything obtained or deduced from another. State v. Wong Fong, 75 Mont. 81, 241 P. 1072.

DERIVATIVE ACTION. A suit by a shareholder to enforce a corporate cause of action. The corporation is a necessary party, and the relief which is granted is a judgment against a third person in favor of the corporation. Price v. Gurney, Ohio, 65 S.Ct. 513, 516, 324 U.S. 100, 89 L.Ed. 776.

DERIVATIVE CONVEYANCES. Conveyances which presuppose some other conveyance precedent, and only serve to enlarge, confirm, alter, restrain, restore, or transfer the interest granted by such original conveyance. They are releases, confirmations, surrenders, assignments, and defeasances. 2 Bl.Comm. 324.

DERIVE. To receive, as from a -source or origin. Crews v. Commissioner of Internal Revenue, C.C. A.10, 89 F.2d 412, 416. To proceed from property, sever from capital, however invested or employed, and to come in, receive or draw 'by taxpayer for his separate use, benefit, and disposal. Staples v. United States, D.C.Pa., 21 F.Supp. 737, 739.

DERIVED. Received. Langstaff v. Lucas, D.C., 9 F.2d 691, 693. See, also, Connell v. Harper, 202 Ky. 406, 259 S.W. 1017, 1019.

DEROGATION. The partial repeal or abolishing of a law, as by a subsequent act which limits its scope or impairs its utility and force. Distinguished from *abrogation,* which means the entire repeal and annulment of a law. Dig. 50, 17, 102.

DEROGATORY CLAUSE. In a will, this is a sentence or secret character inserted by the testator, of which he reserves the knowledge to himself, with a condition that no will he may make thereafter should be valid, unless this clause be inserted word for word. This is done as a precaution to guard against later wills being extorted by violence, or otherwise improperly obtained. By the law of England such a clause would be void, as tending to make the will irrevocable. Wharton.

Derogatur legi, cum pars detrahitur; abrogatur legi, cum prorsus tollitur. To derogate from a law is to take away part of it; to abrogate a law is to abolish it entirely. Dig. 50, 17, 102.

DESAFUERO. In Spanish law. An irregular action committed with violence against law, custom, or reason.

DESAMORTIZACION. In Mexican law. The *desamortizacion* of property is to take it out of mortmain, (dead hands;) that is, to unloose it from the grasp, as it were, of ecclesiastical or civil corporations. The term has no equivalent in English. Hall, Mex.Law, § 749.

DESCEND. To pass by succession; as when the estate vests by operation of law in the heirs immediately upon the death of the ancestor. Trahern v. Woolwine, 109 W.Va. 623, 155 S.E. 909, 910. The term, as used in some statutes, includes an acquisition by devise. Cordon v. Gregg, 164 Or. 306, 101 P.2d 414, 415.

To pass down from generation to generation. Weedin v. Chin Bow, C.C.A.Wash., 7 F.2d 369.

To go ;—often used as a word of transfer. Gordon v. Cadwalader, 164 Cal. 509, 130 P. 18, 20.

As used in wills, the word "descend" is often regarded as a general expression equivajent to the words "go to" or "belong to," and as indicating a passing of title by the force of the will rather than of the statute. Klingman v. Gilbert, 90 Kan. 545, 135 P. 682, 684; Carter v. Reserve Gas Co., 84 W.Va. 741, 100 S.E. 738, 742.

DESCENDANT. One who is descended from another; a person who proceeds from the body of another, such as a child, grandchild, etc., to the remotest degree. The term is the opposite of "ascendant," *(q.* v.) Rasmusson v. Unknown Wife of Hoge, 293 Ill. 101, 127 N.E. 356, 359; State v. Yturria, 204 S.W. 315, 316, 109 Tex. 220, L.R.A.

1918F, 1079. In the plural, the term means offspring or posterity in general; Carter Oil Co. v. Scott, D.C.Okl., 12 F.2d 780, 783. Issue. Burkley v. Burkley, 266 Pa. 338, 109 A. 687, 688; In re Tinker's Estate, 91 Oki. 21, 215 P. 779, 781. Also, all those to whom an estate descends, whether it be in a direct or collateral line from the intestate. Oakley v. Davey, 49 Ohio App. 113, 195 N.E. 406.

One on whom the law has cast the property by descent. Smith v. Thom, 158 Ky. 655, 166 S.W. 182. An heir. Lee v. Roberson, 297 Ill. 321, 130 N.E. 774, 778. In this sense, the term is frequently held to include an adopted child. In re Cadwell's Estate, 26 Wyo. 412, 186 P. 499, 501. For "Family," see that title.

*Descendants* is a good term of description in a will, and includes all who proceed from the body of the person named; as grandchildren and great-grandchildren. Amb. 397; 2 Hil.Real Prop. 242.

Lineal Descendant

One who is in the line of descent from the ancestor. Green v. Hussey, 228 Mass. 537, 117 N.E. 798. Lawful issue. Sassier v. J. Connelly Const. Co., 227 Mich. 251, 198 N.W. 989, 991. The term may include an adopted child; Denton v. Miller, 110 Kan. 292, 203 P. 693, 694; who is as lawfully in the line of descent as if placed there by birth; Fisher v. Gardnier, 183 Mich. 660, 150 N.W. 358. Contra: State v. Yturria, 109 Tex. 220, 204 S.W. 315, 316, L.R.A.1918F, 1079.

DESCENDER. Descent; in the descent. See Formedon.

DESCENDIBLE. Capable of passing by descent, or of being inherited or transmitted by devise, (spoken of estates, titles, offices, and other property.) Collins v. Smith, 105 Ga. 525, 31 S.E. 449.

DESCENT. Hereditary succession. Succession to the ownership of an estate by inheritance, or by any act of law, as distinguished from "purchase." Title by descent is the title by which one person, upon the death of another, acquires the real estate of the latter as his heir at law. 2 Bl.Comm. 201; Adams v. Akerlund, 168 Ill. 632, 48 N.E. 454; In re Yahola's Heirship, 142 Okl. 79, 285 P. 946. The title by inheritance is in all cases called descent, although by statute law the title is sometimes made to ascend.

"Descent" in its broadest sense signifies an inheritance cast upon any one capable of receiving it, whether heir at common law or not. Kicey v. Kicey, 114 N.J.Eq. 116, 168 A. 424, 426.

The division among those legally entitled thereto of the real property of intestates.

*Classification*

Descents are of two sorts, *lineal* and *collateral.* Lineal descent is descent in a direct or right line, as from father or grandfather to son Dr grandson. In re Herrick's Estate, 273 N.Y.S. 803, 152 *Misc.* 9. Collateral descent is descent in a collateral or oblique line, that is, up to the common ancestor and then down from him, as from brother to brother, or between cousins. Levy v. McCartee, 6 Pet. 112, 8 L.Ed. 334. They are also distinguished into *mediate* and *immediate* descends. But these terms are used in different senses. A descent may be said to be a mediate or immediate descent of the estate or right; or it may be said to be mediate or immediate, in regard to the mediateness or immediateness of the pedigree or consanguinity. Thus, a descent from the grandfather, who dies in possession, to the grandchild, the father being then dead, or from the uncle to the nephew, the brother being dead, is, in the former sense, in law, immediate descent, although the one is collateral and the other lineal; for the heir is in the *per,* and not in the *per* and *cut.* On the other hand, with reference to the line of pedigree or consanguinity, a descent is often said to be immediate, when the ancestor from whom the party derives his blood is immediate, and without any intervening link or degrees; and mediate, when the kindred is derived from him *mediante altero,* another ancestor intervening between them. Thus a descent in lineals from father to son is in this sense immediate; but a descent from grandfather to grandson, the father being dead, or from uncle to nephew, the brother being dead, is deemed mediate; the father and the brother being, in these latter cases, the *medium deferens,* as it is called, of the descent or consanguinity. Furenes v. Mickelson, 86 Iowa, 508, 53 N.W. 416.

Descent was denoted, in the Roman law, by the term *"successio,"* which is also used by Bracton, from which has been derived the *succession* of the Scotch and French jurisprudence.

Line of Descent

The order or series of persons who have descended one from the other or all from a common ancestor, considered as placed in a line of succession in the order of their birth, the line showing the connection of all the blood-relatives.

Collateral line. A line of descent connecting persons who are not directly related to each other as ascendants or descendants, but whose relationship consists in common descent from the same ancestor.

Direct line. A line of descent traced through those persons only who are related to each other directly as ascendants or descendants. State ex rel. Walton v. Yturria, 109 Tex. 220, 204 S.W. 315, 316, L.R.A.1918F, 1079.

Maternal line. A line of descent or relationship between two persons which is traced through the mother of the younger.

Paternal line. A similar line of descent traced through the father.

For "Family," see that title.

DESCENT CAST. The devolving of realty upon the heir on the death of his ancestor intestate.

Another name for what the older writers called a "descent which tolls entry." When a person had acquired land by disseisin, abatement, or intrusion, and died seised of the land, the descent of it to his heir took away or tolled the real owner's right of entry, so that he could only recover the land by an action. Co.Litt. 237 b; Rap. & L. Dict.

DESCRIBE. To narrate, express, explain. Boynton Real Estate Co. v. Woodbridge Tp., 94 N.J. Law, 226, 109 A. 514, 515. Of land, to give the metes and bounds. Livingston v. Seaboard Air Line R. Co., 100 S.C. 18, 84 S.E. 303.

DESCRIPTIO PERSONI. Lat. Description of the person. By this is meant a word or phrase used merely for the purpose of identifying or pointing out the person intended, and not as an

intimation that the language in connection with which it occurs is to apply to him only in the official or technical character which might appear to be indicated by the word. . Forrester v. Cantley, 227 Mo.App. 325, 51 S.W.2d 550, 551.

In wills, it frequently happens that the word heir is used as a *descriptio personce.* A legacy "to the eldest son" of A would be a designation of the person. See 1 Roper, Leg. c. 2.

DESCRIPTION. A delineation or account of a particular subject by the recital of its characteristic accidents and qualities. Ayliffe, Pand. 60.

A written enumeration of items composing an estate, or of its condition, or of titles or documents; like an inventory, but with more particularity, and without involving the idea of an appraisement.

An exact written account of an article, mechanical device, or process which is the subject of an application for a patent.

A method of pointing out a particular person by referring to his relationship to some other person or his character as an officer, trustee, executor, etc.

That part of a conveyance, advertisement of sale, etc., which identifies the land or premises intended to be affected. Argyle v. Bonneville Irr. Dist., 74 Utah, 480, 280 P. 722, 727.

A fair portrayal of the chief features of the proposed law in words of plain meaning, so that it can be understood by the persons entitled to vote. Sawyer Stores v. Mitchell, 103 Mont. 148, 62 P.2d 342, 348; In re Opinion of the Justices, Mass., 9 N.E.2d 189, 192.

That part of affidavit for search warrant describing the place to be searched. Turner v. State, 39 Okl.Cr. 74, 263 P. 476.

DESCRIPTIVE. Containing a description; serving or aiming to describe; having the quality of representing. Sawyer Stores v. Mitchell, 103 Mont. 148, 62 P.2d 342, 348.

Descriptive words are not susceptible of exclusive adoption by any one as part of a corporate name. Sterling Products Corporation v. Sterling Products, D.C.N.Y., 43 F.Supp. 548, 550; are not registerable under the Trade-Mark Act § 2; 15 U.S.C.A. § 1052. Judson Dunaway Corp. v. Hygienic Products Corp., 178 F.2d 461; and cannot ordinarily form the basis for an injunction against their use by another on ground of unfair competition. Merlino v. Schmetz, 66 R.I. 425, 20 A.2d 266, 268.

DESECRATE. To violate sanctity of, to profane, or to put to unworthy use. City of Shreveport v. Harris, 178 La. 685, 152 So. 330.

The calling on householders after 10 a. m. on Sunday by members of an organized religious order for purpose of propagandizing their religious views by spoken and printed words, however unwelcome to householders, did not, in itself, constitute a desecration of the Sabbath. State v. Mead, 230 Iowa 1217, 300 N.W. 523, 524.

DESERT. To leave or quit with an intention to cause a permanent separation; to forsake utterly; to abandon. It is essentially willful in nature. Stevens v. Stevens, 304 Ill. 297, 136 N.E. 785, 787; Stover v. Stover, 94 N.J.Eq. 703, 120 A. 788, 789.

DESERTER. As applied to seamen, one continually and intentionally absent from the ship, constituting a quitting of the service of the vessel. The Strathearn, D.C.Fla., 239 F. 583, 586. Compare Mystic S. S. Co. v. Stromland, C.C.A.Va., 20 F.2d 342, 344; The Ella Pierce Thurlow, D.C.Va., 18 F.2d 675, 676.

Under the regulations of the Navy Department, a "deserter" is one who is absent without leave and with a manifest intention not to return, while a "straggler" is one absent without leave, with the probability that he does not intend to desert, but, if his absence continues for 10 days, he becomes a deserter. Reed v. United States, C.C.A. N.Y., 252 F. 21, 22.

As applied to the matrimonial home, one who by his words, conduct, demeanor, and attitude produces an intolerable condition which forces the other spouse to withdraw from the joint habitation to a more peaceful one. West v. West, 264 Ky. 826, 95 S.W.2d 789, 790.

DESERTION. The act by which a person abandons and forsakes, without justification, or unauthorized, a station or condition of public or social life, renouncing its responsibilities and evading its duties.

A willful abandonment of an employment or duty in violation of a legal or moral obligation. Stoneburner v. Theodoratos, Cal.App., 30 P.2d 1001, 1003.

### Constructive Desertion

That arising where an existing cohabitation is put an end to by misconduct of one of the parties, provided such misconduct is itself a ground for divorce a vinculo or a mensa. Succhierelli v. Succhierelli, 101 N.J.Eq. 30, 137 A. 839. See, also, Hoffhines v. Hoffhines, 146 Md. 350, 126 A. 112, 113, 38 A.L.R. 332.

### Obstinate Desertion

See that title.

### In Maritime Law

The act by which a seaman deserts and abandons a ship or vessel, in which he had engaged to perform a voyage, before the expiration of his time, and without leave. By desertion, in the maritime law, is meant, not a mere unauthorized absence from the ship without leave, but an unauthorized absence from the ship, with an intention not to return to her service, or, as it is often expressed, animo non *revertendi;* that is, with an intention to desert. The Cripple Creek, D.C.Pa., 52 F.Supp. 710, 712; (strike) The Youngstown, C. C.A.La., 110 F.2d 968, 970.

### In Matrimonial and Divorce Law

An actual abandonment or breaking off of matrimonial cohabitation, by either of the parties, and a renouncing or refusal of the duties and obligations of the relation, with an intent to abandon or forsake entirely and not to return to or resume

marital relations, occurring without legal justification either in the consent or the wrongful conduct of the other party. State v. Baker, 112 La. 801, 36 So, 703. Williams v. Williams, 29 N.E. 98, 130 N.Y. 193, 14 L.R.A. 220, 27 Am.St.Rep. 517.

The willful forsaking and desertion of duties of parenthood, and leaving child in a dependent condition. Bowling v. State, 62 Ga. 540, 8 S.E.2d 697,

In Military Law

An offense which consists in the abandonment of his post and duties by a person commissioned or enlisted in the army or navy, without leave and with the intention not to return. Hollingsworth V. Shaw, 19 Ohio St. 432, 2 Am.Rep. 411; In re Sutherland, D.C., 53 F. 551. There is a difference between desertion and simple "absence without leave;" in order to constitute the former, there must be an intention not to return to the service. Hanson v. South Scituate, 115 Mass. 336. See Deserter.

DESERVING. Worthy or meritorious, without regard to condition or circumstances. In no sense of the word is it limited to persons in need of assistance, or objects which come within the class of charitable uses. Nichols v. Allen, 130 Mass. 211, 39 Am.Rep. 445.

DESHONORA. In Spanish law. Dishonor; injury; slander. Las Partidas, pt. 7, tit. 9, 1. 1, 6.

DESICCATE. To exhaust or remove moisture from; dry thoroughly; especially to free from moisture with view to preserving. In re Benner, Cust. & Pat. App., 46 F.2d 383, 384,

DESIGN. To form plan or scheme of, conceive and arrange in mind, originate mentally, plan out, contrive. Also, the plan or scheme conceived in mind and intended for subsequent execution, preliminary conception of idea to be carried into effect by action, contrivance in accordance with preconceived plan. State v. Pickus, 63 S.D. 209, 257 N.W. 284. A project, an idea. 3 H. & N. 301. See, also, Designed.

As a term of art, the giving of a visible form to the conceptions of the mind, or invention. Binns v. Woodruff, 4 Wash.C.C. 48, Fed. Cas. No. 1,424.

In Evidence

Purpose or intention, combined with plan, or implying a plan in the mind. Burrill, Circ.Ev. 331; State v. Grant, 86 Iowa 216, 53 N.W. 120.

In Patent Law

The drawing or depiction of an original plan or conception for a novel pattern, model, shape, or configuration, to be used in the manufacturing or textile arts or the fine arts, and chiefly of a decorative or ornamental character. "Design patents" are contrasted with "utility patents," but equally involve the exercise of the inventive or originative faculty. Gorham Co. v. White, 14 Wall. 524, 20 L.Ed. 731; Western Electric Manufacturing Co. v. Odell, D.C.I1L, 18 F. 321; Binns v. Woodruff, 3 Fed.Cas. 424; Henderson v. Tompkins, C.C.Mass., 60 F. 758.

"Design, in the view of the patent law, is that characteristic of a physical substance which, by means of lines, images, configuration, and the like, taken as a whole, makes an impression, through the eye, upon the mind of the observer. The essence of a design resides not in the elements individually, nor in their method of arrangement, but in the tout ensemble—in that indefinable whole that awakens some sensation in the observer's mind. Impressions thus imparted may be complex or simple; * * *. But whatever the impression, there is attached in the mind of the observer, to the object observed, a sense of uniqueness and character." Pelouze Scale & Mfg. Co. v. American Cutlery Co., 102 F. 916, 919, 43 C.C.A. 52; Bayley & Sons v. Braunstein Bros. Co., D.C.N.Y., 246 F. 314, 317.

DESIGNATE. To indicate or set apart for a purpose or duty—with, to or for—as, to designate an officer for a command. Mutual Discount Corporation v. Nagy, 111 N.J.L. 592, 169 A. 185, 186. To nominate. Sredzinski v. Schmieding, 283 N.Y.S. 332, 334, 245 App.Div. 398.

Designatio justiciariorum est a rege; jurisdictio vero ordinaria a lege. 4 Inst. 74. The appointment of justices is by the king, but their ordinary jurisdiction by the law.

DESIGNATING PETITION. Means used to designate a candidate for a party nomination at a primary election or for election to party position. Potash v. Molik, 230 N.Y.S.2d 544, 548, 35 Misc.2d 1.

DESIGNATIO PERSON2E. The description of a person or a party to a deed or contract. See, also, Descriptio Person.

Designatio unius est exclusio alterius, et expressum facit cessare taciturn. Co. Litt. 210. The specifying of one is the exclusion of another, and that which is expressed makes that which is understood to cease. (The appointment or designation of one is the exclusion of the other; and that which is expressed prevails over that which is implied.)

DESIGNATION. An addition to a name, as of title, profession, trade, or occupation, to distinguish the person from others. Inglis v. Pontius, 102 Ohio St. 140, 131 N.E. 509, 511, 512.

A description or descriptive expression by which a person or thing is denoted in a will without using the name.

Also, an appointment or assignment, as to a particular office. Santa Barbara County v. Janssens, 177 Cal. 114, 169 P. 1025, 1027, L.R.A.1918C, 558; Cunio v. Franklin County, 315 Mo. 405, 285 S.W. 1007, 1008.

The act of pointing out, distinguishing by marks of description, or calling by a distinctive title. Thrailkill v. Smith, 106 Ohio St. 1, 138 N.E. 532, 534; West v. Edward Rutledge Timber Co., C.C.A.Idaho, 221 F. 30, 35; State v. Madison State Bank of Virginia City, 77 Mont. 498, 351 P. 548, 549; Carlyle v. State Highway Commission, 193 N.C. 36, 136 S.E. 612, 620.

DESIGNED. Contrived or taken to be employed for a particular purpose. People v. Dorrington,

221 Mich. 571, 191 N.W. 831, 832. Fit, adapted, prepared, suitable, appropriate. Thomas v. State, 34 Okl.Cr. 49, 244 P. 816. Intended, adapted, or designated. The term may be employed as indicating a bad purpose with evil intent. Bruce v. Sibeck, Cal.App., 78 P.2d 741, 743.

DESIGNEDLY. Sometimes equivalent to the words "wilfully," "knowingly," "unlawfully," and "feloniously." State v. Avery, 111 Kan. 588, 207 P. 838, 840, 23 A.L.R. 453.

DESIRE. To ask, to request. Fossett v. State, 34 Okl.Cr. 106, 245 P. 668, 669. Ordinarily, to wish for more or less earnestly. Woods v. Postal Telegraph-Cable Co., 205 Ala. 236, 87 So. 681, 684, 27 A.L.R. 834. Sometimes, to empower or authorize. Walters' Guardian v. Ransdell, 218 Ky. 267, 291 S.W. 399, 400. According to context or circumstances, the word may import a request or even a demand. Cleveland Clinic Foundation v. Humphrys, C.C.A.Ohio, 97 F.2d 849, 857, 121 A. L.R. 163.

This term, used in a will in relation to the management and distribution of property, has been interpreted by the courts with different shades of meaning, varying from the mere expression of a preference to a positive command. See In re Bearinger's Estate, 336 Pa. 253, 9 A.2d 342, 343; Beakey v. Knutson, 90 Or. 574, 174 P. 1149, 1150.

The word "desire" may be as effective as if the word "devise" or "bequeath" Rad been used. Drinkard v. Hughes, Tex.Civ.App., 32 S.W.2d 935, 936.

The word "desire," in a will, raises a trust, where the objects of that desire are specified; Vandyck v. Van Beuren, 1 Cai. (N.Y.) 84.

MSISTEMENT. The name of a doctrine under which the court, in construing a foreign will, applies the law of the forum on the theory that there is a hiatus. In re Tallmadge, 181 N.Y.S. 336, 341, 109 Misc. 696.

DESLINDE. A term used in the Spanish law, denoting the act by which the boundaries of an estate or portion of a country are determined.

DESMEMORIADOS. In Spanish law. Persons deprived of memory. White, New Recop. b. 1, tit. 2, c. 1, § 4.

DESPACHEURS. In maritime law. Persons appointed to settle cases of average.

DESPATCHES. Official communications of official persons on the affairs of government.

DESPERATE. Hopeless; worthless. This term is used in inventories and schedules of assets, particularly by executors, etc., to describe debts or claims which are considered impossible or hopeless of collection. See Schultz v. Pulver, 11 Wend. (N.Y.) 365; Darrow v. Rohrer, 71 Colo. 417, 207 P. 861; Toll. Ex. 248; 2 Wms. Ex. 644; 1 Chitt. Pr. 580.

DESPERATE DEBT. A hopeless debt; an irrecoverable obligation.

DESPITE. Contempt. *Despitz,* contempts. Kelham.

DESPITUS. Contempt. See Despite. A contemptible person. Fleta, lib. 4, c. 5.

DESPOIL. This word involves, in its signification, violence or clandestine means by which one is deprived of that which he possesses. Its Spanish equivalent, *despojar,* is a term used in Mexican law. Sunol v. Hepburn, 1 Cal. 268.

DESPOJAR. A possessory action of the Mexican law. It is brought to recover possession of immovable property, of which one has been despoiled *(despojado)* by another. See, also, Despoil.

DESPONSATION. The act of betrothing persons to each other.

DESPOSORIO. In Spanish law. Espousals; mutual promises of future marriage. White, New Recop. b. 1, tit. 6, c. 1, § 1.

DESPOT. This word, in its original and most simple acceptation, signifies *master and supreme lord;* it is synonymous with monarch; but taken in bad part, as it is usually employed, it signifies a tyrant. In some states, despot is the title given to the sovereign, as king is given in others. Enc. Lond.

DESPOTISM. That abuse of government where the sovereign power is not divided, but united in the hands of a single man, whatever may be his official title. It is not, properly, a form of government. Toullier, Dr.Civ.Fr. tit. prel. n. 32; Rutherf. Inst. b. 1, c. 20, § 1.

"Despotism" is not exactly synonymous with "autocracy," for the former involves the idea of tyranny or abuse of power, which is not necessarily implied by the latter. Every despotism is autocratic; but an autocracy is not necessarily despotic.

DESRENABLE. L. Fr. Unreasonable. Britt. c. 121.

DESSAISISSEMENT. In French law. When a person is declared bankrupt, he is immediately deprived of the enjoyment and administration of all his property; this deprivation, which extends to all his rights, is called "dessaisissement." Arg. Fr. Merc. Law, 556.

DESTINATION. The purpose to which it is intended an article or a fund shall be applied. A testator gives a destination to a legacy when he prescribes the specific use to which it shall be put.

The port at which a ship is to end her voyage is called her "port of destination." Pardessus, no. 600.

The phrases "port of destination" and "port of discharge" are not equivalent; U. S. v. Barker, 5 Mason 404, Fed.Cas.No.14,516. See Sheridan v. Ireland, 66 Me. 65.

DESTINATION DU PERE DE FAMILLE. A use which owner has intentionally established on one part of his property in favor of another part, and which is equal to a title with respect to perpetual and apparent servitudes thereon. Woodcock v. Baldwin, 51 La.Ann. 989, 26 So. 46.

DESTITUTE. Not possessing the necessaries of life and in a condition of extreme want. Moorman v. State, 129 Miss. 864, 93 So. 368. Necessitous. Ex parte Strong, 95 Tex.Cr.R. 250, 252 S.W. 767, 769. Having no money or other property available for one's maintenance or support. Norridgewock v. Solon, 49 Me. 385; Woods v. Perkins, 43 La.Ann. 347, 9 So. 48.

DESTITUTE OR NECESSITOUS CIRCUMSTANCES. Circumstances in which one needs the necessaries of life, which cover not only primitive physical needs, things absolutely indispensable to human existence and decency, but those things, also, which are in fact necessary to the particular person left without support. State v. Waller, 90 Kan. 829, 136 P. 215, 217, 49 L.R.A.,N.S., 588.

A wife may be In "destitute or necessitous circumstances" though she is being given shelter and food by a child or by sympathizing relatives, friends, or strangers, if she does not have property or money available for such necessities or ordinary comforts of life as her husband can reasonably furnish. State v. Sharp, 111 A. 909. 910, 1 W.W. Harr., Del., 148; Brandel v. State, 161 Wis. 532, 154 N.W. 997.

Young children, without property, are in "destitute or necessitous circumstances," within the. Delaware Nonsupport Act (Rev.Code 1915, §§ 3033-3046), when the father can, but does not, and the mother cannot out of her independent means, provide for them, though the mother and children are supported by the maternal grandmother or grandfather. State v. Nelson, 114 A. 863, 864, 1 W.W. Harr. (Del.) 436; Donaghy v. State, 100 A. 696, 710, 6 Boyce (Del.) 467.

DESTROY. As used in policies of insurance, leases, and in maritime law, and under various statutes, this term is often applied to an act which renders the subject useless for its intended purpose, though it does not literally demolish or annihilate it. Davis v. Parker, 200 Ky. 847, 255 S.W. 836 (leased buildings) ; Louisville & N. R. Co. v. Commonwealth, 190 Ky. 78, 226 S.W. 113, 117 (railroad station) ; George v. McManus, 27 Cal.App. 414, 150 P. 73, 74 (automobile).

To "destroy" a vessel within the meaning of an act of congress means to unfit the vessel for service, beyond the hope of recovery by ordinary means. U. S. v. Johns, 1 Wash.C.C. 363, Fed.Cas.No.15,481; U. S. v. Johns, 4 Dall. 412, 1 L. Ed. 888.

The contents of a glass and bottle, emptied into a pail of water immediately when accused saw two uniformed police officers enter his building, are "destroyed" within the meaning of a statute making it unlawful to secrete or destroy any fluids on premises being searched for the purpose of preventing seizure. Pitkunas v. State, 183 Wis. 90, 197 N.W. 191, 192.

Land covered by spoil dirt from drainage channel is destroyed within constitutional provision that land destroyed for drainage purposes shall be paid for at a price not to exceed assessed value for preceding year. Scott v. Red River-Bayou Pierre Levee & Drainage Dist. of Louisiana, La.App., 7 So.2d 429, 433.

In relation to wills, contracts, and other documents, the term "destroy" does not import the annihilation of the instrument or its resolution into other forms of matter, but a destruction of its legal efficacy, which may be by cancellation, obliterating, tearing into fragments, etc. In re Kapp's Estate, 317 Pa. 253, 176 A. 501, 502.

DESTRUCTION. A term used in old English law, generally in connection with *waste,* and having, according to some, the same meaning. 1 Reeve, Eng. Law, 385; 3 Bl.Comm. 223. Britton, however, makes a distinction between waste of woods and destruction of houses. Britt. c. 66.

DESUBITO. To weary a person with continual barkings, and then to bite; spoken of dogs. Leg Alured, 26, cited in Cunningham's Dict.

DESUETUDE. Disuse; cessation, or discontinuance of use;—especially in the phrase, "to fall into desuetude." Applied to obsolete statutes. James v. Comm., 12 Serg. & R. (Pa.) 227.

DETACHIARE. To seize or take into custody another's goods or person by writ of attachment or course of law. Cunningham.

DETAIL, v. To enumerate minutely, particularize. In re California Land Buyers Syndicate, D.C. Cal., 22 F.Supp. 183, 186.

DETAIL, n. An individual part, an item, a particular. Board of Education of Prince George's County v. County Com'rs of Prince George's County, 131 Md. 658, 102 A. 1007, 1010.

One who belongs to the army, but is only detached, or set apart, for the time to some particular duty or service, and who is liable at any time to be recalled to his place in the ranks. In re Strawbridge, 39 Ala. 379.

DETAIN. To retain as the possession of personalty. First Nat. Bank v. Yocom, 96 Or. 438, 189 P. 220, 221. To arrest, to check, to delay, to hinder, to hold, or keep in custody, to retard, to restrain from proceeding, to stay, to stop. People v. Smith, 17 Cal.App.2d 468, 62 P.2d 436, 438.

DETAINER. The act (or the juridical fact) - of withholding from a person lawfully entitled the possession of land or goods, or the restraint of a man's personal liberty against his will; detention.

The wrongful keeping of a person's goods is called an "unlawful detainer" although the original taking may have been lawful. As, if one distrains another's cattle, *damage feasant,* and before they are impounded the owner tenders sufficient amends; now, though the original taking was lawful, the subsequent detention of them after tender of amends is not lawful, and the owner has an action of replevin to recover them, in which he will recover damages for the *detention,* and not for the *caption,* because the original taking was lawful. 3 Steph.Comm. 548.

In Practice

A writ or instrument, issued or made by a competent officer, authorizing the keeper of a prison to keep in his custody a person therein named. A detainer may be lodged against one within the walls of a prison, on what account soever he is there. Com.Dig. "Process," E, (3 B.) This writ was superseded by 1 & 2 Vict. c. 110, §§ 1, 2.

Forcible Detainer

See that title.

DETAINMENT. This term is used in policies of marine insurance, in the clause relating to "arrests, restraints, and detainments." The last two

words are construed as equivalents, each meaning the effect of superior force operating directly on the vessel. Schmidt v. Insurance Co., 1 Johns., N.Y., 262, 3 Am.Dec. 319.

DETECTION. A discovery or laying open of that which was hidden; investigation. Meunier v. Bernich, La.App., 170 So. 567, 572.

DETECTIVE. One whose business it is to watch, and furnish information concerning, alleged wrongdoers by investigating their haunts and habits. One whose business it is to detect criminals or discover matters of secret and pernicious import for the protection of the public. Smith v. S. H. Kress & Co., 210 Ala. 436, 98 So. 378, 380.

Private Detective

One engaged by individuals for private protection. Smith v. S. H. Kress & Co., 210 Ala. 436, 98 So. 378, 380.

DETECTOR. Any device, or piece of apparatus, which, when energized, actuated, or acted upon by or by means of the so-called Hertzian waves, enable men, through the senses of hearing or sight, to understand signals based upon the intentionally regulated emission or propagation of the waves aforesaid. Marconi Wireless Telegraph Co. of America v. De Forest Radio Telephone & Telegraph Co., C.C.A.N.Y., 243 F. 560, 561. In wireless telegraphy, the "detector" or "coherer" and "wave responsive device" is a device by which the electromagnetic waves cause the indicator to respond. National Electric Signaling Co. v. Telefunken Wireless Telegraph Co. of United States, C.C.A.N.Y., 221 F. 629, 631.

DETENTIO. In the civil law. That condition of fact under which one can exercise his power over a corporeal thing at his pleasure, to the exclusion of all others. It forms the substance of possession in all its varieties. Mackeld. Rom. Law, § 238.

DETENTION. The act of keeping back or withholding, either accidentally or by design, a person or thing. State v. Crappel, 181 La. 715, 160 So. 309. See Detainer.

DETENTION IN A REFORMATORY, as a punishment or measure of prevention, is where a juvenile offender is sentenced to be sent to a reformatory school, to be there detained for a certain period of time. 1 Russ. Crimes, 82.

DETER. To discourage or stop by fear, to stop or prevent from acting or proceeding by danger, difficulty, or other consideration which disheartens or countervails the motive for the act. Haynesworth v. Hall Const. Co., 44 Ga.App. 807, 163 S.E. 273, 277.

DETERIORATION. Of a commodity, a constitutional hurt or impairment, involving some degeneration in the substance of the thing, such as that arising from decay, corrosion, or disintegration. The mere soiling of a commodity with sea water or other foreign substance, resulting in a purely superficial hurt or impairment removable by the simple process of cleansing, cannot be said to be "deterioration" within the ordinary meaning of that term. Rosen-Reichardt Brokerage Co. v. London Assur. Corporation, 214 Mo.App. 672, 264 S.W. 433, 436.

Of values, a decline. Laxson v. Scarborough, Tex.Civ.App., 221 S.W. 1029.

DETERMINABLE. Liable to come to an end upon the happening of a certain contingency. 2 Bl. Comm. 121.

Susceptible of being determined, found out, definitely decided upon, or settled. Utah State Nat. Bank v. Smith, 180 Cal. 1, 179 P. 160, 161.

As to determinable "Fee" and "Freehold," see those titles.

DETERMINATE. That which is ascertained; what is particularly designated.

As used in Good Time Law covering prisoners confined for a determinate, the term, signifies a definite number of years fixed by the court. Hinkle v. Dowd, Ind., 58 N.E. 2d 342, 343.

DETERMINATE OBLIGATION. See Obligation.

DETERMINATION. The decision of a court of justice. It implies an ending or finality, the ending of a controversy or suit. People v. Jackson, 181 N.Y.S. 226, 191 App.Div. 269. The ending or expiration of an estate or interest in property, or of a right, power, or authority. The coming to an end in any way whatever. Hanchett Bond Co. v. Glore, 208 Mo.App. 169, 232 S.W. 159, 160.

Also, an estimate. Unton v. Liverpool, London & Globe Ins. Co., 166 Minn. 273, 207 N.W. 625, 626.

As respects an assessment, the term implies judgment and decision after weighing the facts; Appeal of Hoskins Mfg. Co., 270 Mich. 592, 259 N.W. 334, not mere arithmetical computation. Hanlon v. Rollins, 286 Mass. 404, 190 N.E. 606, 608.

DETERMINATION OF WILL. A phrase used of the putting an end to an estate at will. 2 Bl. Comm. 146.

DETERMINE. To come to an end. To bring to an end. 2 Bl.Comm. 121; 1 Washb. Real Prop. 380.

To bring to a conclusion, to settle by authoritative sentence, to decide. Eastman Kodak Co. v. Richards,, 123 Misc. 83, 204 N.Y.S. 246, 248. To adjudicate on an issue presented. Glenn v. Mitchell, 71 Colo. 394, 207 P. 84, 85.

To estimate. Twin Falls Salmon River Land & Water Co. v. Caldwell, C.C.A.Idaho, 242 F. 177, 184.

To decide, and analogous to "adopt" or "accept." Goldberger v. City of Perth Amboy, 16 N. J.Misc. 8/4, 197 A. 267, 269.

DETESTATIO. Lat. In the civil law. A summoning made, or notice given, in the presence of witnesses, *(denuntiatio facts cum testatione.)* Dig. 50, 16, 40.

DETINET. Lat. He detains. In old English law. A species of action of debt, which lay for the specific recovery of goods, under a contract to deliver them. 1 Reeves, Eng. Law, 159.

In Pleading

An action of *debt* is said to be in the *detinet* when it is alleged merely that the defendant withholds or unjustly detains from the plaintiff the thing or amount demanded.

An action of *replevin* is said to be in the *detinet* when the defendant retains possession of the property until after judgment in the action. Bull, N.P. 52; Chit.Pl. 145.

DETINUE. In practice. A form of action which lies for the recovery, *in specie,* of personal chattels from one who acquired possession of them lawfully, but retains it without right, together with damages for the detention. 3 Bl.Comm. 152. Sinnott v. Feiock, 165 N.Y. 444, 59 N.E. 265, 53 L.R.A. 565, 80 Am.St.Rep. 736.

The action of dettinue is defined in the old books as a remedy founded upon the delivery of goods by the owner to another to keep, who afterwards refuses to redeliver them to the bailor; and it is said that, to authorize the maintenance of the action, it is necessary that the defendant should have come lawfully into the possession of the chattel, either by delivery to him or by finding it. In fact, it was once understood to be the law that *detinue* does not lie where the property had been tortiously taken. But it is, upon principle, very unimportant in what manner the defendant's possession commenced, since the gist of the action is the wrongful detainer, and not the original taking.

It is only incumbent upon the plaintiff to prove property in himself, and possession in the defendant. At present, the action of *detinue* is proper in every case where the owner prefers recovering the specific property to damages for its conversion, and no regard is had to the manner in which the defendant acquired the possession. Tiefel Bros. & Winn v. Maxwell, Tex.Civ.App., 154 S.W. 319, 320.

DETINUE OF GOODS IN FRANK MARRIAGE. A writ formerly available to a wife after a divorce, for the recovery of the goods given with her in marriage. Mozley & Whitley.

DETINUIT. In pleading. An action of replevin is said to be in the *detinuit* when the plaintiff acquires possession of the property claimed by means of the writ. The right to retain is, of course, subject in such case to the judgment of the court upon his title to the property claimed. Bull, N.P. 521.

DETOUR. A temporary turning aside from usual or regular route, course or procedure or from a task or employment. Reddy-Waldhauer-Maffett Co. v. Spivey, 53 Ga.App. 117, 185 S.E. 147, 148.

A temporary road or a longer road in temporary use because of an obstruction on regularly used road.

DETOURNEMENT. The misappropriation by a servant of funds the property of his master; fraudulent abstraction of documents; or "abus de confiance" which is fraudulently misusing or spending to anybody's prejudice goods, cash, bills, documents, or contracts handed over for a special object. See Embezzlement. The Washington D.C.N.Y., 19 F.Supp. 719, 722.

DETRACTARI. To be torn in pieces by horses. Fleta, 1. 1, c. 37.

DETRACTION. The removal of property from one state to another upon a transfer of the title to it by will or inheritance. Frederickson v. Louisiana, 23 How. 445, 16 L.Ed. 577.

DETRIMENT. Any loss or harm suffered in person or property; *e. g.,* the consideration for a contract may consist not only in a payment or other thing of value given, but also in loss or "detriment" suffered by the promisee. In that connection, "detriment" means that the promisee has, in return for the promise, forborne some legal right which he otherwise would have been entitled to exercise. Wallace v. Cook, 190 Ky. 262, 227 S.W. 279, 281; or that he has given up something which he had a right to keep, or done something which he had a right not to do. Irving v. Irwin, 133 Cal.App. 374, 24 P.2d 215.

DETUNICARI. To discover or lay open to the world, Matt. Westm. 1240.

DEUNX, pl. DEUNCES. Lat. In the Roman law. A division of the *as,* containing eleven *uncice* or duodecimal parts; the proportion of eleven-twelfths. 2 Bl.Comm. 462, note. See As.

Deus solus hmredem facere potest, non homo. God alone, and not man, can make an heir. Co. Litt. *7b;* Broom, Max. 516; 5 B. & C. 440, 454.

DEUTEROGAMY. The act, or condition, of one who marries after the death of a former wife or husband.

DEVADIATUS, or DIVADIATUS. An offender without sureties or pledges. Cowell.

DEVASTATION. Wasteful use of the property of a deceased person, as for extravagant funeral or other unnecessary expenses. 2 Bl.Comm. 508.

DEVASTAVERUNT. They have wasted. A term applied in old English law to waste by executors and administrators, and to the process issued against them therefor. Cowell. See Devastavit.

DEVASTAVIT. Lat. He has wasted. The act of an executor or administrator in wasting the goods of the deceased; mismanagement of the estate by which a loss occurs; Grigg v. Hanna, 283 Mich. 443, 478 N.W. 125; a breach of trust or Misappropriation of assets held in a fiduciary character; any violation or neglect of duty by an executor or administrator, involving loss to the decedent's estate, which makes him personally responsible to heirs, creditors, or legatees. McGlaughlin v. McGlaughlin, 43 W.Va. 226, 27 S.E. 378.

Also, if plaintiff, in an action against an executor or administrator, has obtained judgment, the usual execution runs *de bonis testatoris;* but, if the sheriff returns such a writ *nulla bona testatoris nec propria,* the plaintiff may, forthwith, upon this return, sue out an execution against

the property or person of the executor or administrator, in as full a manner as in an action against him, sued in his own right. Such a return is called a *"devastavit."* Brown.

DEVELOP. To progress to a more advanced state or condition, as an injury. Rabin v. Central Business Men's Ass'n, 116 Kan. 280, 226 P. 764, 766, 38 A.L.R. 26. To bring, or attempt to bring, to a state of fruition; to continue the work in hand, as in operating under an oil and gas lease, in a manner that would discover oil, if it existed, and promote its production. Lacer v. Sumpter, 198 Ky. 752, 249 S.W. 1026, 1027. To unfold more completely; to evolve the possibilities or power of; to make active; to perfect; advance; further; to make; to increase; to promote the growth of. Leingang v. Geller, Ward & Hasner Hardware Co., 335 Mo. 549, 73 S.W.2d 256, 261.

DEVELOPED WATER. Such subterranean or underground water as is discovered and brought to the surface by the exploitation of man, and which otherwise would run to waste. Rock Creek Ditch & Flume Co. v. Miller, 17 P.2d 1074, 1077, 93 Mont. 248, 89 A.L.R. 200; Jones v. Warmsprings Irr. Dist., 162 Or. 186, 91 P.2d 542.

DEVENERUNT. A writ, now obsolete, directed to the king's escheators when any of the king's tenants *in capite* dies, and when his son and heir dies within age and in the king's custody, com. manding the escheators, that by the oaths of twelve good and lawful men they shall inquire what lands or tenements by the death of the tenant have come to the king. Dyer, 360; Termes de la Ley; Keilw. 199a; Blount; Cowell.

DEVEST. To deprive; to take away; to withdraw. Usually spoken of an authority, power, property, or title; as the estate is devested.

Devest is opposite to invest. As to invest signifies to deliver the possession of anything to another, so to devest signifies to take it away. Jacob.

It is sometimes written "divest" but "devest" has the support of the best authority. Burrill.

DEVIATION.

In General

A change made in the progress of a work from the original terms or design or method agreed upon. Ward v. City of Monrovia, 16 Ca1.2d 815, 108 P.2d 425, 429.

A voluntary departure by railroad carrier, without necessity or reasonable cause, from the regi, lar or usual route or from a stipulated or customary mode of carriage. Ward v. Gulf, M. & N. R. Co., 23 Tenn.App. 533, 134 S.W.2d 917, 924.

In Insurance

Varying from the risks insured against, as described in the policy, without necessity or just cause, after the risk has begun. 1 Phil.Ins. § 977, *et seq.;* 1 Arn.Ins. 415, *et seq.* Hostetter v. Park, 137 U.S. 30, 11 Sup.Ct. 1, 34 L.Ed. 568.

Any unnecessary or unexcused departure from the usual or general mode of carrying on the voy. age insured. 15 Amer. Law Rev. 108; Shackman v. Cunard White Star, D.C.N.Y., 31 F.Supp. 948, 951.

A voluntary departure without reasonable cause from the course of the voyage insured, or an unreasonable delay in pursuing the voyage, or the commencement of an entirely different voyage. The Chester Valley, C.C.A.La., 110 F.2d 592, 594; The Willdomino v. Citro Chemical Co. of America, 272 U.S. 718, 47 S.Ct. 261, 262, 71 L.Ed. 491.

In the Law of Master and Servant

A departure on the part of a servant from his master's service, for some purpose of his own. Jeffries v. Jodawelky, 304 Mich. 421, 8 N.W.2d 121, 122. The liability of the master to third persons injured by the servant depends on the degree of deviation and all the attending circumstances. Johnson v. Maryland Cass Co., C.C.A. Wis., 125 F.2d 337, 338. To exonerate the master, the deviation must be so substantial as to amount to an entire departure, and must be for purposes entirely personal to the servant. Thomas v. Lockwood Oil Co., 174 Wis. 486, 182 N.W. 841, 843. Contra, it is held that the test is whether master impliedly consented to route taken, and there can be no such thing as a slight deviation. Kalinowski v. Odlewany, 289 Mich. 684, 287 N.W. 344, 345. As to a distinction between "deviation," "temporary abandonment," and "complete abandonment," see Dockweiler v. American Piano Co., 94 Misc. 712, 160 N.Y.S. 270, 273.

DEVICE. An invention or contrivance; any result of design; as in the phrase "gambling device," which means a machine or contrivance of any kind for the playing of an unlawful game of chance or hazard. State v. Blackstone, 115 Mo. 424, 22 S.W. 370. Also, a plan or project; a scheme to trick or deceive; a stratagem or artifice; as in the laws relating to fraud and cheating. State v. Smith, 82 Minn. 342, 85 N.W. 12. Also an emblem, pictorial representation, or distinguishing mark or sign of any kind; as in the laws prohibiting the marking of ballots used in public elections with "any device." Baxter v. Ellis, 111 N.C. 124, 15 S.E. 938, 17 L.R.A. 382.

In a statute against gaming devices, this term is to be understood as meaning something formed by design, a contrivance, an invention. It is to be distinguished from "substitute," which means something put in the place of another thing, or used instead of something else. Henderson v. State, 59 Ala. 91.

In Patent Law

A plan or contrivance, or an application, adjustment, shaping, or combination of materials or members, for the purpose of accomplishing a particular result or serving a particular use, chiefly by mechanical means and usually simple in character or not highly complex, but involving the exercise of the inventive faculty.

DEVIL ON THE NECK. An instrument of torture, formerly used to extort confessions, etc. It was made of several irons, which were fastened

to the neck and legs, and wrenched together so as to break the back. Cowell.

DEVILLING. A term used in London of a barrister recently admitted to the bar, who assists a junior barrister in his professional work, without compensation and without appearing in any way in the matter.

DEVISABLE. Capable of being devised. 1 Pow. Dev. 165; 2 Bl.Comm. 373,

DEVISAVIT VEL NON. In practice. The name of an issue sent out of a court of chancery, or one which exercises chancery jurisdiction, to a court of law, to try the validity of a paper asserted and denied to be a will, to ascertain whether or not the testator did devise, or whether or not that paper was his will. 7 Brown, Parl.Cas, 437; 2 Atk. 424; Asay v. Hoover, 5 Pa. 21, 45 Am.Dec. 713.

DEVISE. A testamentary disposition of land or realty; a gift of real property by the last will and testament of the donor. Scholle v. Scholle, 113 N.Y. 261, 21 N.E. 84; Murchison v. Wallace, 156 Va, 728, 159 S.E. 106, 108.

*Classification*

Devises are *contingent* or *vested;* that is, after the death of the testator. Contingent, when the vesting of any estate in the devisee is made to depend upon some future event, in which case, if the event never occur, or until it does occur, no estate vests under the devise. But, when the future event is referred to merely to determine the time at which the devisee shall come into the use of the estate, this does not hinder the vesting of the estate at the death of the testator. 1 Jarm.Wills, c. 26. Devises are also classed as *general* or *specific.* A general devise is one which passes lands of the testator without a particular enumeration or description of them; as, a devise of "all my lands" or "all my other lands." In a more restricted sense, a general devise is one which grants a parcel of land without the addition of any words to show how great an estate is meant to be given, or without words indicating either a grant in perpetuity or a grant for a limited term; in this case it *is* construed as granting a life estate. Hitch v. Patten, 8 Houst. (Del.) 334, 16 A. 558, 2 L.R.A. 724. Specific devises are devises of lands particularly specified in the terms of the devise, as opposed to general and residuary devises of land, in which the local or other particular descriptions are not expressed. For example, "I devise my Hendon Hall estate" is a specific devise; but "I devise all my lands," or, "all other my lands," is a *general* devise or a *residuary* devise. But all devises are (in effect) specific, even residuary devises being so. L.R. 3 Ch. 420; Id. 136. At common law, all devises of land were deemed to be "specific" whether the land was identified in the devise or passed under the residuary clause. In re Sutton's Estate, 11 Del.Ch. 460, 97 A. 624, 626. A *conditional* devise is one which depends upon the occurrence of some uncertain event, by which it is either to take effect or be defeated. 'An *executory* devise of lands is such a disposition of them by will that thereby no estate vests at the death of the devisor, but only on some future contingency. It differs from a remainder in three very material points ; (1) That it needs not any particular estate to support it; (2) that by it a fee-simple or other less estate may be limited after a fee-simple; (3) that by this means a remainder may be limited of a chattel interest, after a particular estate for life created in the same. 2 Bl.Comm. 172. In a stricter sense, a limitation by will of a future contingent interest in lands, contrary to the rules of the common law. 4 Kent, Comm. 263; 1 Steph.Comm. 564; Dean v. Crews, 77 Fla. 319, 81 So. 479. A limitation by will of a future estate or interest in land, which cannot, consistently with the rules of law, take effect as a remainder. 2 Pow.Dev. (by Jarman,) 237; Bean v. Atkins, 87 Vt. 376, 89 A. 643, 646. See Poor v. Considine, 6 Wall. 474, 18 L.Ed. 869; Glover v. Condell, 163 Ill. 566, 45 N.E. 173, 35 L.R.A. 360. A future interest taking effect as a fee in derogation of a defeasible fee devised or conveyed to the first taker, when created by will, is an "executory devise," and, when created by deed, is a "conditional limitation," and in either event is given effect as a shifting or springing use. McWilliams v. Havely, 214 Ky. 320, 283 S.W. 103, 104.

The estates known as a contingent remainder and an "executory devise" are both interests or estates in land to take effect in the future and depend upon a future contingency; an "executory devise" being an interest which the rules of law do not permit to be created in conveyances, but allow in case of wills. It follows a fee estate created by a will. A contingent remainder may be created by will or other conveyance and must follow a particular or temporary estate created by the same instrument of conveyance. Wilkins v. Rowan, 107 Neb. 180, 185 N.W. 437, 439. *Lapsed* devise. A devise which fails, or takes no effect, in consequence of the death of the devisee before the testator; the subject-matter of it being considered as not disposed of by the will. 1 Steph.Comm. 559; 4 Kent, Comm. 541. Murphy v. McKeon, 53 N.J.Eq. 406, 32 A. 374. *Residuary* devise. A devise of all the residue of the testator's real property, that is, all that remains over and above the other devises.

*Synonyms*

The term "devise" is properly restricted to real property; testamentary dispositions of personal property being properly called "bequests" or "legacies." Borgner v. Brown, 133 Ind. 391, 33 N.E. 92.

To contrive; plan; scheme; invent; prepare. Stockton v. United States, C.C.A.Ill., 205 F. 462, 464, 46 L.R.A.,N.S., 936.

DEVISEE. The person to whom lands or other real property are devised or given by will. 1 Pow. Dev. c. 7. In re Lewis' Estate, 39 Nev, 445, 159 P. 961, 962, 4 A.L.R. 241.

Residuary Devisee

The person named in a will, who is to take all the real property remaining over and above the other devises.

DEVISOR. A giver of lands or real estate by will; the maker of a will of lands; a testator.

DEVOIR. Fr. Duty. It is used in the statute of 2 Rich. II. c. 3, in the sense of duties or customs.

DEVOLUTION. The transfer or transition from one person to another of a right, liability, title, estate, or office. Francisco v. Aguirre, 94 Cal. 180, 29 P. 495.

In Ecclesiastical Law

The forfeiture of a right or power (as the right of presentation to a living) in consequence of its non-user by the person holding it, or of some other act or omission on his part, and its resulting transfer to the person next entitled.

In Scotch Law

The transference of the right of purchase, from the highest bidder at an auction sale, to the next highest, when the former fails to pay his bid or furnish security for its payment within the time appointed. Also, the reference of a matter in controversy to a third person (called "oversman") by two arbitrators to whom it has been submitted and who are unable to agree.

DEVOLUTIVE APPEAL. In the law of Louisiana, one which does not suspend the execution of

the judgment appealed from. Brock v. Police Jury of Rapides Parish, 198 La. 787, 4 So.2d 829, 832.

DEVOLVE. To pass or be transferred from one person to another; to fall on, or accrue to, one person as the successor of another; as a title, right, office, liability. The term is said to be peculiarly appropriate to the passing of an estate from a person dying to a person living. Babcock v. Maxwell, 29 Mont. 31, 74 P. 64; Fitzpatrick v. McAlister, 121 Okl. 83, 248 P. 569, 573; People ex rel. Robin v. Hayes, 149 N.Y.S. 250, 252, 163 App. Div. 725. See Devolution.

DEVULCANIZE. Of rubber. A more or less perfect restoration of vulcanized rubber to a state in which it might be used as crude rubber. Philadelphia Rubber Works Co. v. Portage Rubber Co., D.C.Ohio, 227 F. 623, 627.

DEVY. L. Fr. Dies; deceases. Bendloe, 5.

DEXTANS. Lat. In Roman law. A division of the *as,* consisting of ten *uncice;* ten-twelfths, or five-sixths. 2 Bl.Comm. 462, note m.

DEXTRARIUS. One at the right hand of another.

DEXTRAS DARE. To shake hands in token of friendship; or to give up oneself to the power of another person.

DI COLONNA. In maritime law. The contract which takes place between the owner of a ship, the captain, and the mariners, who agree that the voyage shall be for the benefit of all. The term is used in the Italian law. Emerig. Mar. Loans, § 5.

DI. ET FI. L.Lat. In old writs. An abbreviation of *dilecto et fideli,* (to his beloved and faithful.)

DIACONATE. The office of a deacon.

DIACONUS. A deacon.

DIAGNOSIS. A medical term, meaning the discovery of the source of a patient's illness or the determination of the nature of his disease from a study of its symptoms. Said to be little more than a guess enlightened by experience. Swan v. Railroad Co., 29 N.Y.S. 337, 79 Hun 612; People v. Jordan, 172 Cal. 391, 156 P. 451, 454.

The art or act of recognizing the presence of disease from its symptoms, and deciding as to its character, also the decision reached, for determination of type or condition through case or specimen study or conclusion arrived at through critical perception or scrutiny. A "clinical diagnosis" is one made from a study of the symptoms only, and a "physical diagnosis" is one made by means of physical measure, such as palpation and inspection. Williams v. Elias, 140 Neb. 656, 1 N.W.2d 121, 123.

DIAGONAL, n. A right line drawn from the one angle to another not adjacent of a figure of four or more sides and dividing it into two parts. Semerad v. Dunn County, 35 N.D. 437, 160 N.W. 855, 858.

DIAGONAL, *adj.* Joining two not adjacent angles of a quadrilateral or multilateral figure running across from corner to corner; crossing at an angle with one of the sides. Semerad v. Dunn. County, 35 N.D. 437, 160 N.W. 855, 858.

DIALECTICS. That branch of logic which teaches the rules and modes of reasoning.

DIALLAGE. A rhetorical figure in which arguments are placed in various points of view, and then turned to one point. Enc.Lond.

DIALOGUS DE SCACCARIO. Dialogue of or about the exchequer. An ancient treatise on the court of exchequer, attributed by some to Gervase of Tilbury, by others to Richard Fitz Nigel, bishop of London in the reign of Richard I. It is quoted by Lord Coke under the name of Ockham. Crabb, Eng. Law, 71.

DIANATIC. A logical reasoning in a progressive manner, proceeding from one subject to another. Enc. Lond.

DIARIUM. Daily food, or as much as will suffice for the day. Du Cange.

DIATHERMY. Heat treatment by electricity. Biener v. St. Louis Public Service Co., Mo.App., 160 S.W.2d 780, 788.

DIATIM. In old records. Daily; every day; from day to day. Spelman.

DICA. In old English law. A tally for accounts, by number of cuts, *(taillees,)* marks, or notches. Cowell. See Tallia; Tally.

DICAST. An officer in ancient Greece answering in some respects to our juryman, but combining, on trials had before them, the functions of both judge and jury. The dicasts sat together in numbers varying, according to the importance of the case, from one to five hundred.

DICE. Small cubes of bone or ivory, marked with figures or devices on their several sides, used in playing certain games of chance. See Wetmore v. State, 55 Ala. 198.

DICTA. Opinions of a judge which do not embody the resolution or determination of the court. Deer Island Fish & Oyster Co. v. First Nat. Bank, 166 Miss. 162, 146 So. 116, 119. See Dictum.

DICTATE. To order or instruct what is to be said or written. To pronounce, word by word, what is meant to be written by another. Hamilton v. Hamilton, 6 Mart., N.S., La., 143. See Dictation.

DICTATION. In Louisiana, this term is used in a technical sense, and means to pronounce orally what is destined to be written at the same time by another. It is used in reference to nuncupative wills. Prendergast v. Prendergast, 16 La.Ann. 220, 79 Am.Dec. 575. *The* dictation of a will refers to the substance, and not the style, and it is sufficient if the will, as written, conveys the identity of thought expressed by the testator, though

not the identity of words used by him. Succession of Beattie, 163 La. 831, 112 So. 802, 803.

DICTATOR. A magistrate invested with unlimited power, and created in times of national distress and peril. Among the Romans, he continued in office for six months only, and had unlimited power and authority over both the property and lives of the citizens.

One in whom supreme authority in any line is invested, one who rules as dictator, and one who prescribes for others authoritatively. Houston Printing Co. v. Hunter, Tex.Civ.App., 105 S.W.2d 312, 317.

DICTATORSHIP OF PROLETARIAT. The class power of the revolutionary proletariat (unskilled laborers without property) arising upon destruction of the state. People v. Gitlow, 234 N.Y. 132, 136 N.E. 317, 322.

DICTORES. Arbitrators.

DICTUM.

In General

A statement, remark, or observation. Gratis *dictum;* a gratuitous or voluntary representation; one which a party is not bound to make. 2 Kent, Comm. 486. *Simplex dictum;* a mere assertion; an assertion without proof. Bract. fol. 320.

The word *is* generally used as an abbreviated form of *obiter dictum,* "a remark by the way;" that is, an observation or remark made by a judge in pronouncing an opinion upon a cause, concerning some rule, principle, or application of law, or the solution of a question suggested by the case at bar, but not necessarily involved in the case or essential to its determination; any statement of the law enunciated by the court merely by way of illustration, argument, analogy, or suggestion. See Railroad Co. v. Schutte, 103 U.S. 118, 143, 26 L.Ed. 327; City of Lincoln v. Steffensmeyer, 134 Neb. 613, 279 N.W. 272, 119 A.L.R. 914; Deer Island Fish & Oyster Co. v. First Nat. Bank, 166 Miss. 162, 146 So. 116, 119.

Statements and comments in an opinion concerning some rule of law or legal proposition not necessarily involved nor essential to determination of the case in hand are obiter dicta, and lack the force of an adjudication. Wheeler v. Wilkin, 98 Colo. 568; 58 P.2d 1223, 1226; Roquemore v. Sovereign Camp, W.O.W., 226 Ala. 279, 146 So. 619, 622.

*Dicta are* opinions of a judge which do not embody the resolution or determination of the court, and made without argument, or full consideration of the point, are not the professed deliberate determinations of the judge himself. *Obiter dicta* are such opinions uttered by the way, not upon the point or question pending, as if turning aside for the time from the main topic of the case to collateral subjects. Rohrbach v. Insurance Co., 62 N.Y. 47, 58, 20 Am. Rep. 451.

In Old English Law

*Dictum* meant an arbitrament, or the award of arbitrators.

In French Law

The report of a judgment made by one of the judges who has given it. Poth.Proc.Civil, pt. 1, c. 5, art. 2.

DICTUM DE KENILWORTH. The edict or declaration of Kenilworth. An edict or award between King Henry III. and all the barons and others who had been in arms against him; and so called because it was made at Kenilworth Castle in Warwickshire, in the fifty-first year of his reign, containing a composition of five years' rent for the lands and estates of those who had forfeited them in that rebellion. Blount; 2 Reeve, Eng.Law, 62.

DIE, v. To expire; cease to live; the equivalent to the phrase "lose his life." Hershey v. Agnew, 83 Colo. 89, 262 P. 526, 528.

DIE, n. A mold. Cole v. United States, C.C.A. Colo., 269 F. 250, 251.

DIE WITHOUT ISSUE. See Dying Without Issue.

DIEI DICTIO. Lat. In Roman law. This name was given to a notice promulgated by a magistrate of his intention to present an impeachment against a citizen before the people, specifying the day appointed, the name of the accused, and the crime charged.

DIEM CLAUSIT EXTREMUM. (Lat. He has closed his last day,—died.) A writ which formerly lay on the death of a tenant *in capite,* to ascertain the lands of which he died seised, and reclaim them into the king's hands. It was directed to the king's escheators. Fitzh.Nat.Brev. 251, K; 2 Reeve, Eng.Law, 327.

A writ awarded out of the exchequer after the death of a crown debtor, the sheriff being commanded by it to inquire by a jury when and where the crown debtor died, and what chattels, debts, and lands he had at the time of his decease, and to take and seize them into the crown's hands. 4 Steph.Comm. 47, 48.

DIES. Lat. A day; days. Days for appearance in court. Provisions or maintenance for a day. The king's rents were anciently reserved by so many days' provisions. Spelman; Cowell; Blount.

DIES A QUO. (The day from which.) In the civil law. The day from which a transaction begins; the commencement of it; the conclusion being the *dies ad quem.* Mackeld.Rom.Law, § 185.

DIES AMORIS. A day of favor. The name given to the appearance day of the term on the fourth day, or *quarto die post.* It was the day given by the favor and indulgence of the court to the defendant for his appearance, when all parties appeared in court, and had their appearance recorded by the proper officer. Wharton.

DIES CEDIT. The day begins; *dies venit,* the day has come. Two expressions in Roman law which signify the vesting or fixing of an interest, and the interest becoming a present one. Sandars' Just.Inst. (5th Ed.) 225, 232.

DIES COMMUNES IN BANCO. Regular days for appearance in court; called, also "common return-days." 2 Reeve, Eng.Law, 57.

DIES DATUS. A day given or allowed, (to a defendant in an action; ) amounting to a continuance. But the name was appropriate only to a continuance before a declaration filed; if afterwards allowed, it was called an "imparlance."

DIES DATUS IN BANCO. A day given in the *bench,* (or court of common pleas.) Bract. fols. 257b, 361. A day given in bank, as distinguished from a day at *nisi prius.* Co.Litt. 135.

DIES DATUS PARTIBUS. A day given to the parties to an action; an adjournment or continuance. Crabb, Eng.Law, 217.

DIES DATUS PRECE PARTIUM. A day given on the prayer of the parties. Bract. fol. 358; Gilb. Comm.Pl. 41; 2 Reeve, Eng.Law, 60.

DIES DOMINICUS. The Lord's day; Sunday.

Dies dominicus non est juridicus. Sunday is not a court day, or day for judicial proceedings, or legal purposes. Co.Litt. 135a; Noy, Max. 2; Wing. Max. 7, max. 5; Broom, Max. 21.

DIES EXCRESCENS. In old English law. The added or increasing day in leap year. Bract. fols. 359, 359b.

DIES FASTI. In Roman law. Days on which the courts were open, and justice could be legally administered; days on which it was lawful for the prEetor to pronounce *(tali)* the *three* words, "do," *"dico," "addico."* Mackeld.Rom.Law, § 39, and note; 3 Bl.Comm. 424, note; Calvin. Hence called *"triverbial* days," answering to the *dies juridici* of the English law.

DIES FERIATL In the civil law. Holidays. Dig. 2, 12, 2, 9.

DIES GRATIIE. In old English practice. A day of grace, courtesy, or favor. Co.Litt. 134b. The *quarto die post* was sometimes so called. Id. 135a.

Dies inceptus pro completo habetur. A day begun is held as complete.

Dies incertus pro conditione habetur. An uncertain day is held as a condition.

DIES INTERCISI. In Roman law. Divided days; days on which the courts were open for a part of the day. Calvin.

DIES JURIDICUS. A lawful day for the transaction of judicial or court business; a day on which the courts are or may be open for the transaction of business. Didsbury v. Van Tassell, 56 Hun, 423, 10 N.Y.Supp. 32.

DIES LEGITIMUS. In the civil and old English law. A lawful or law day; a term day; a day of appearance.

DIES MARCIII1E. In old English law. The day of meeting of English and Scotch, which was annually held on the marches or borders to adjust their differences and preserve peace.

DIES NEFASTI. In Roman law. Days on which the courts were closed, and it was unlawful to administer justice; answering to the *dies non juridici* of the English law. Mackeld.Rom.Law, § 39, note.

DIES NON. An abbreviation of *Dies non juridicus, (q. v.).*

DIES NON JURIDICUS. In practice. A day not juridical; not a court day. A day on which courts are not open for business, such as Sundays and some holidays. Havens v. Stiles, 8 Idaho, 250, 67 P. 921, 56 L.R.A. 736, 101 Am.St.Rep. 195.

DIES PACIS. (Days of peace.) The year was formerly divided into the days of the peace of the church and the days of the peace of the king, including in the two divisions all the days of the year. Crabb, Eng.Law, 35.

DIES SOLARIS. In old English law. A solar day, as distinguished from what was called *"dies lunaris,"* (a lunar day;) both composing an artificial day. Bract. fol. 264. See Day.

DIES SOLIS. In the civil and old English law. Sunday, (literally, the day of the sun.) See Cod. 3, 12, 7.

DIES UTILES. Juridical days; useful or available days. A term of the Roman law, used to designate those especial days occurring within the limits of a prescribed period of time upon which it was lawful, or possible, to do a specific act.

DIET. A general legislative assembly is sometimes so called on the continent of Europe.

In Scotch Practice

The sitting of a court. An appearance day. A. day fixed for the trial of a criminal cause. A criminal cause as prepared for trial.

DIETA. A day's journey; a day's work; a day's expenses.

DIETS OF COMPEARANCE. In Scotch law. The days within which parties in civil and criminal prosecutions are cited to appear. Bell.

DIEU ET MON DROIT. Fr. God and my right. The motto of the royal arms of England, first assumed by Richard I.

DIEU SON ACTE. L. Fr. In old law. God his act; God's act. An event beyond human foresight or control. Termes de la Ley.

DIFFACERE. To destroy; to disfigure or deface.

DIFFERENCE. In an agreement for submission to arbitration, a disagreement or dispute. Fravert v. Fesler, 11 Colo.App. 387, 53 Pac. 288; Pioneer Mfg. Co. v. Phoenix Assur. Co., 106 N.C. 28, 10 S.E. 1057.

As respects contract specifications or material described therein, a state of being unlike. Mc-

Garry Contracting Co. v. Board of Education of City of New York, 284 N.Y. 218, 30 N.E.2d 482.

In mathematics, the magnitude or quantity by which one magnitude or quantity differs from another of the same kind; the remainder left after subtracting the one from the other. Riley Stoker Corporation v. Jeffrey Mfg. Co., 62 Ohio App. 199, 23 N.E.2d 519, 522.

Difficile est ut unus homo vicem duorum sustineat. 4 Coke, 118. It is difficult that one man should sustain the place of two.

DIFFICULT. For the meaning of the phrase "difficult and extraordinary case," as used in New York statutes and, practice, see Standard Trust Co. v. New York, etc., R. Co., 178 N.Y. 407, 70 N.E. 925; Realty Associates v. Packard Motor Car Co. of New York, 119 Misc. 292, 196 N.Y.S. 198, 200; Cohen v. Texas Co., D.C.N.Y., 23 F.2d 128, 129.

DIFFORCIARE. In old English law. To deny, or keep from one. *Difforciare rectum,* to deny justice to any one, after having been required to do it.

DIFFUSE. To spread widely; scatter; disperse. Ex parte Hinkelman, 183 Cal. 392, 191 P. 682, 683, 11 A.L.R. 1222.

DIGAMA, or DIGAMY. Second marriage; marriage to a second wife after the death of the first, as "bigamy," in law, is having two wives at once. Originally, a man who married a widow, or married again after the death of his wife, was said to be guilty of bigamy. Co.Litt. 40b, note.

DIGEST. A collection or compilation, embodying the chief matter of numerous books in one, disposed under proper heads or titles, and usually by an alphabetical arrangement, for facility in reference.

As a legal term, "digest" is to be distinguished from "abridgment." The latter is a summary or epitome of the contents of a single work, in which, as a rule, the original order or sequence of parts is preserved, and in which the principal labor of the compiler is in the matter of consolidation. A digest is wider in its scope ; is made up of quotations or paraphrased passages ; and has its own system of classification and arrangement. An "index" merely points out the places where particular matters may be found, without purporting to give such matters *in extenso.* A "treatise" or "commentary" is not a compilation, but an original composition, though it may include quotations and excerpts.

A reference to the "Digest," or "Dig.," is always understood to designate the Digest (or Pandects) of the Justinian collection; that being the digest par *eminence,* and the authoritative compilation of the Roman law.

The American Digest System embraces the Century, First, Second, Third, Fourth Decennials, and General Digest. It covers the decisions of all American courts of last resort, State and Federal, from 1658 to date, under one uniform classification. The First Decennial, Second Decennial, Third Decennial, Fourth Decennial and General Digest, are Key-Numbered. There are also the United States Supreme Court Digest, covering all cases in that court, and the Federal Digest, covering the Federal Reporter, Federal Supplement and the Supreme Court Reporter.

DIGESTA. Digests. One of the titles of the Pandects of Justinian. Inst. *Prcem, §* 4. Bracton uses the singular, *"Digestum."* Bract. fol. 19.

DIGESTS. The ordinary name of the Pandects of Justinian, which are now usually cited by the abbreviation "Dig." instead of "Ff.," as formerly. Sometimes called "Digest," in the singular.

DIGGING. Has been held as synonymous with "excavating," and not confined to the removal of earth. Sherman v. New York, 1 N.Y. 316.

DIGNITARY. In canon law. A person holding an ecclesiastical benefice or dignity, which gave him some pre-eminence above mere priests and canons. To this class exclusively belonged all bishops, deans, archdeacons, etc.; but it now includes all the prebendaries and canons of the church. Brande.

DIGNITY. In English law. An honor; a title, station, or distinction of honor. Dignities are a species of incorporeal hereditaments, in which a person may have a property or estate. 2 Bl.Comm. 37; 1 Bl.Comm. 396; 1 Crabb, Real Prop. 468, et seq.

DIJUDICATION. Judicial decision or determination.

DIKE. A bank, as of earth, thrown up to form a barrier, line of demarcation, or the like; especially an embankment to prevent inundation. Parker v. Department of Labor and Industries, 14 Wash.2d 481, 128 P.2d 497, 500.

DIKING. Leveling land in arid regions, particularly sagebrush land. An essential operation in the conversion of such land into farms or orchards. Craig v. Crystal Realty Co., 89 Or. 25, 173 P. 322, 325.

DILACION. In Spanish law. A space of time granted to a party to a suit in which to answer a demand or produce evidence of a disputed fact.

DILAPIDATION. A species of ecclesiastical waste which occurs whenever the incumbent suffers any edifices of his ecclesiastical living to go to ruin or decay. It is either voluntary, by pulling down, or permissive, by suffering the church, parsonage-houses, and other buildings thereunto belonging, to decay. And the remedy for either lies either in the spiritual court, where the canon law prevails, or in the courts of common law. It is also held to be good cause of deprivation if the bishop, parson, or other ecclesiastical person dilapidates buildings or cuts down timber growing on the patrimony of the church, unless for necessary repairs; and that a writ of prohibition will also lie against him in the common-law courts. 3 Bl. Comm. 91.

The term is also used, in the law of landlord and tenant, to signify the neglect of necessary repairs to a building, or suffering it to fall into a

state of decay, or the pulling down of the building or any part of it. Wall Estate Co. v. Standard Box Co., 20 Cal.App. 311, 128 P. 1020, 1021.

Dilationes in lege sunt odiosce. Delays in law are odious. Branch, Princ.

DILATORY. Tending or intended to cause delay or to gain time or to put off a decision.

DILATORY DEFENSE. In chancery practice. One the object of which is to dismiss, suspend, or obstruct the suit, without touching the merits, until the impediment or obstacle insisted on shall be removed. 3 Bl.Comm. 301, 302.

DILATORY EXCEPTIONS are such as do not tend to defeat the action, but only to retard its progress.

DILATORY PLEAS. A class of defenses at common law, founded on some matter of fact not connected with the merits of the case, but such as might exist without impeaching the right of action itself. They were either pleas to the *jurisdiction,* showing that, by reason of some matter therein stated, the case was not within the jurisdiction of the court; or pleas in *suspension,* showing some matter of temporary incapacity to proceed with the suit; or pleas in *abatement,* showing some matter for abatement or quashing the declaration. 3 Steph.Comm. 576. Parks v. McClellan, 44 N.J. Law, 513, 558; Shaw v. Southern Ry. Co., 17 Ga. App. 78, 86 S.E. 95.

DILIGENCE. Prudence; vigilant activity; attentiveness; or care, of which there are infinite shades, from the slightest momentary thought to the most vigilant anxiety. People v. Hewitt, 78 Cal.App. 426, 248 P. 1021, 1024. The law recognizes only three degrees of diligence: (1) Common or ordinary, which men, in general, exert in respect of their own concerns; the standard is necessarily variable with respect to the facts, although it may be uniform with respect to the principle. (2) High or great, which is extraordinary diligence, or that which very prudent persons take of their own concerns. (3) Low or slight, which is that which persons of less than common prudence, or indeed of no prudence at all, take of their own concerns. Brown & Flowers v. Central of Georgia Ry. Co., 197 Ala. 71, 72 So. 366, 367.

The civil law is in perfect conformity with the common law. It lays down three degrees of diligence,—ordinary, *(diligentia;)* extraordinary, *(exactissima diligentia;)* slight, *(levissima diligentia.)* Story, Bailm. 19.

There may be a high degree of diligence, a common degree of diligence, and a slight degree of diligence, with their corresponding degrees of negligence, and these can be clearly enough defined for all practical purposes, and, with a view to the business of life, seem to be all that are really necessary. Common or ordinary diligence is that degree of diligence which men in general exercise in respect to their own concerns ; high or great diligence is of course extraordinary diligence, or that which very prudent persons take of their own concerns; and low or slight diligence is that which persons of less than common prudence, or indeed of any prudence at all, take of their own concerns.

Ordinary negligence is the want of ordinary diligence; slight, or less than ordinary, negligence is the want of great diligence; and gross or more than ordinary negligence is the want of slight diligence. Railroad Co. v. Rollins, 5 Kan. 180.

In Scotch Law and Practice

Process of law, by which persons, lands, or effects are seized in execution or in security for debt. Ersk. Inst. 2, 11, 1. Brande. Process for enforcing the attendance of witnesses, or the production of writings. Ersk. Inst. 4, 1, 71.

Other Classifications and Compound Terms

—Due diligence. Such a measure of prudence, activity, or assiduity, as is properly to be expected from, and ordinarily exercised by, a reasonable and prudent man under the particular circumstances; not measured by any absolute standard, but depending on the relative facts of the special case. Perry v. Cedar Falls, 87 Iowa, 315, 54 N.W. 225.

—Extraordinary diligence. That extreme measure of care and caution which persons of unusual prudence and circumspection use for securing and preserving their own property or rights. Railroad Co. v. Huggins, 89 Ga. 494, 15 S.E. 848; Railroad Co. v. White, 88 Ga. 805, 15 S.E. 802.

—Great diligence. Such a measure of care, prudence, and assiduity as persons of unusual prudence and discretion exercise in regard to any and all of their own affairs, or such as persons of ordinary prudence exercise in regard to very important affairs of their own. Litchfield v. White, 7 N.Y. 438, 57 Am.Dec. 534.

—High diligence. The same as great diligence.

—Low diligence. The same as slight diligence.

—Necessary diligence. That degree of diligence which a person placed in a particular situation must exercise in order to entitle him to the protection of the law in respect to rights or claims growing out of that situation, or to avoid being left without redress on account of his own culpable carelessness or negligence. Garahy v. Bayley, 25 Tex.Supp. 302; Sanderson v. Brown, 57 Me. 312.

—Ordinary diligence is that degree of care which men of common prudence generally exercise in their affairs, in the country and the age in which they live. Zell v. Dunkle, 156 Pa. 353, 27 A. 38.

—Reasonable diligence. A fair, proper and due degree of care and activity, measured with reference to the particular circumstances; such diligence, care, or attention as might be expected from a man of ordinary prudence and activity. Ford v. Engleman, 118 Va. 89, 86 S.E. 852, 855.

—Special diligence. The measure of diligence and skill exercised by a good business man in his particular specialty, which must be commensurate with the duty to be performed and the individual circumstances of the case; not merely the dili-

gence of an ordinary person or non-specialist. Brady v. Jefferson, 5 Houst. (Del.) 79.

DILIGENT. Attentive and persistent in doing a thing; steadily applied; active; sedulous; laborious; unremitting; untiring. People v. Mancuso, 255 N.Y. 463, 175 N.E. 177, 179, 76 A.L.R. 514.

DILIGIATUS. (Fr. *De lege ejectus,* Lat.) Outlawed.

DILLIGROUT. In old English law. Pottage formerly made for the king's table on the coronation day. There was a tenure in serjeantry, by which lands were held of the king by the service of finding this pottage at that solemnity.

DIME. A silver coin of the United States, of the value of ten cents, or one-tenth of the dollar.

DIMIDIA, DIMIDIUM, DIMIDIUS. Half; a half; the half.

DIMIDIETAS. The moiety or half of a thing.

DIMINISHED RESPONSIBILITY DOCTRINE. A misnomer for doctrine under which proof of mental derangement short of insanity is submitted as evidence of lack of deliberate or premeditated design. State v. Franco, 347 P.2d 312, 314, 66 N.M. 289, 78 A.L.R.2d 908.

DIMINUTIO. In the civil law. Diminution; a taking away; loss or deprivation. *Diminutio capitis,* loss of *status* or condition. See Capitis Diminutio.

DIMINUTION. Incompleteness. A word signifying that the record sent up from an inferior to a superior court for review is incomplete, or not fully certified. In such case the party may suggest a "diminution of the record," which may be rectified by a *certiorari.* 2 Tidd, Pr. 1109; Stepp v. Stepp, 195 Ga. 595, 25 S.E.2d 6, 8.

DIMISI. In old conveyancing. I have demised. *Dimisi, concessi, et ad firmam tradidi,* have demised, granted, and to farm let. The usual words of operation in a lease. 2 Bl.Comm. 317, 318.

DIMISIT. In old conveyancing. [He] has demised. See Dimisi.

DIMISSORL1E LITTER/E. In the civil law. Letters dimissory or dismissory, commonly called "apostles," *(quce vulgo apostoli dicuntur.)* Dig. 50, 16, 106. See Apostoli, Apostles.

DIMISSORY LETTERS. Where a candidate for holy orders has a title of ordination in one diocese in England, and is to be ordained in another, the bishop of the former diocese gives letters dimissory to the bishop of the latter to enable him to ordain the candidate. Holthouse.

DENTARCHY. A government of two persons.

DINERO.

In Roman Law

A civil division of the Roman empire embracing several provinces. Calvin.

In Spanish Law

Money. *Dinero contado,* money counted. White, New Recop. b. 2, tit. 13, c. 1, § 1.

DIOCESAN. Belonging to a diocese; a bishop, as he stands related to his own clergy or flock.

DIOCESAN COURTS. In English law. The consistorial courts of each diocese, exercising general jurisdiction of all matters arising locally within their respective limits, with the exception of places subject to *peculiar* jurisdiction; deciding all matters of spiritual discipline,—suspending or depriving clergymen,--and administering the other branches of the ecclesiastical law. 2 Steph.Com. 672.

DIOCESAN MISSION. A mission which does missionary work in single diocese. Domestic & Foreign Missionary Soc. v. Crippled Children's Hospital, 163 Va. 114, 176 S.E. 193.

DIOCESE. The territorial extent of a bishop's jurisdiction. The circuit of every bishop's jurisdiction. Co. Litt. 94; 1 Bl.Comm. 111.

DIOICHIA. The district over which a bishop exercised his spiritual functions.

DIP, v. To immerse for a short time in any liquid; to place in fluid and withdraw again; the act of dipping or immersing; a plunge; a brief bath, as the dip of the oars; a dip in the sea. Standard Dictionary, "dip." Covington County v. Pickering, 123 Miss. 20, 85 So. 114, 115.

DIP, n. In mining law. The line of declination of strata; the angle which measures the deviation of a mineralized vein or lode from the vertical plane; the slope or slant of a vein, away from the perpendicular, as it goes downward into the earth; distinguished from the "strike" of the vein, which is its extension in the horizontal plane, or its lengthwise trend or course with reference to the points of the compass. King v. Mining Co., 9 Mont. 543, 24 P. 200.

In Animal Husbandry

A liquid preparation into which infected animals may be plunged for eradication of fever ticks, or other sanitary or medical purposes. Ungles-Hoggette Mfg. Co. v. Farmers' Hog & Cattle Powder Co., C.C.A.Neb., 232 F. 116, 117.

DIPLOMA. In the civil law. A royal charter; letters patent granted by a prince or sovereign. Calvin.

An instrument given by colleges and societies on the conferring of any degrees. State v. Gregory, 83 Mo. 130, 53 Am.Rep. 565.

A license granted to a physician, etc., to practice his art or profession. See Brooks v. State, 88 Ala. 122, 6 So. 902.

DIPLOMACY. The science which treats of the relations and interests of nations with nations.

Negotiation or intercourse between nations through their representatives. The rules, customs, and privileges of representatives at foreign courts.

DIPLOMATIC AGENT. In international law. A general name for all classes of persons charged with the negotiation, transaction, or superintendence of the diplomatic business of one nation at the court of another. See Rev.St.U.S. § 1674 (22 USCA §§ 40, 51).

DIPLOMATICS. The science of diplomas, or of ancient writings and documents; the art of judging of ancient charters, public documents, diplomas, etc., and discriminating the true from the talse. Webster.

DIPPING. The practice of taking snuff by rubbing teeth or gums with stick or brush dipped in snuff. Federal Trade Commission v. American Snuff Co., C.C.A., 38 F.2d 547, 550.

DIPSOMANIA. In medical jurisprudence. A mental disease characterized by an uncontrollable desire for intoxicating drinks. An irresistible impulse to indulge in intoxication, either by alcohol or other drugs. Ballard v. State, 19 Neb. 614, 28 N.W. 271; State v. Wallace, 170 Or. 60, 131 P.2d 222, 223.

DIPSOMANIAC. A person subject to dipsomania. One who has an irresistible desire for alcoholic liquors. Taylor v. Koenigstein, 128 Neb. 809, 260 N.W. 544. See Insanity.

DIPTYCHA. Diptychs; tablets of wood, metal, or other substance, used among the Romans for the purpose of writing, and folded like a book of two leaves. The diptychs of antiquity were especially employed for public registers. They were used in the Greek, and afterwards in the Roman, church, as registers of the names of those for whom supplication was to be made, and are ranked among the earliest monastic records. Burrill.

DIRECT, v. To point to; guide; order; command; instruct. In re Durkee's Estate, 47 N.Y.S. 2d 721, 725, 726, 183 Misc. 382.

To advise; suggest; request. Bowden v. Cumberland County, 123 Me. 359, 123 A. 166, 168.

To assume the role of a director, one whose directions are binding. Gentle v. Frederick, 234 Ala. 184, 174 So. 606, 607.

DIRECT, *adj.* Immediate; proximate; by the shortest course; without circuity; operating by an immediate connection or relation, instead of operating through a medium; the opposite of *indirect.* Trexler Lumber Co. v. Allemannia Fire Ins. Co. of Pittsburgh, 289 Pa. 13, 136 A. 856, 858; Western Assur. Co. v. Hann, 201 Ala. 376, 78 So. 232, 234; Carter v. Carter Coal Co., App.D.C., 298 U.S. 238, 56 S.Ct. 855, 80 L.Ed. 1160.

In the usual or natural course or line; immediately upwards or downwards; as distinguished from that which is out of the line, or on the side of it; the opposite of *collateral.*

In the usual or regular course or order, as distinguished from that which diverts, interrupts, or opposes; the opposite of *cross* or contrary.

Without any intervening medium, agency or influence; unconditional. General Finance Co. v. Powell, 118 P.2d 751, 753, 112 Mont. 535.

DIRECT ATTACK. A direct attack on a judgment or decree is an attempt, for sufficient cause, to have it anrfulled, reversed, vacated, corrected, declared void, or enjoined, in a proceeding instituted for that specific purpose, such as an appeal, writ of error, bill of review, or injunction to restrain its execution; distinguished from a collateral attack, which is an attempt to impeach the validity or binding force of the judgment or decree as a side issue or in a proceeding instituted for some other purpose. Morrill v. Morrill, 20 Or. 96, 25 P. 362; In re Melgaard's Will, 200 Minn. 493, 74 N.W. 641, 649. A direct attack on a judicial proceeding is an attempt to void or correct it in some manner provided by law.

DIRECT CAUSE. The active, efficient cause that sets in motion a train of events which brings about a result without the intervention of any force started and working actively from a new and independent source. Anderson v. Steinle, 289 Ill. App. 167, 6 N.E.2d 879. See, Cause.

DIRECT EVIDENCE. Is that means of proof which tends to show the existence of a fact in question, without the intervention of the proof of any other fact, and is distinguished from circumstantial evidence, which is often called "indirect." See Brown; State v. Calder, 23 Mont. 504, 59 P. 903.

Direct evidence means evidence which in the first instance applies directly to the factum probandum, or which immediately points to a question at issue, or is evidence of the precise fact in issue and on trial by witnesses who can testify that they saw the acts done or heard the words spoken which constituted the precise fact to be proved. Garner v. New Jersey Fidelity & Plate Glass Ins. Co., Mo. App., 200 S.W. 448, Greenl.Ev. § 13; 1 Stark, Ev. 19; Tayl, Ex. 84.

Proof of facts by witnesses who saw acts done or heard words spoken. Texas & N. 0. R. Co. v. Warden, 125 Tex. 193, 78 S.W.2d 164, 167, 125 Tex. 193.

DIRECT EXAMINATION. In practice. The first interrogation or examination of a witness, on the merits, by the party on whose behalf he is called.

This is to be distinguished from an examination in *pais,* or on the *voir dire,* which is merely preliminary, and is had when the competency of the witness is challenged ; from the cross-examination, which is conducted by the adverse party ; and from the redirect examination which follows the cross-examination, and is had by the party who first examined the witness.

DIRECT INJURY. A wrong which directly results in the violation of a legal right and which must exist to permit a court to determine the constitutionality of an act of Congress. Wallace v. Ganley, 95 F.2d 364, 366, 68 App.D.C. 235.

DIRECT INTEREST. A direct interest, such as would render the interested party incompetent to testify in regard to the matter, is an interest which is certain, and not contingent or doubtful. Rine

v. Rine, 100 Neb. 225, 158 N.W. 941, 943. A matter which is dependent alone on the successful prosecution of an execution cannot be considered as uncertain, or otherwise than direct, in this sense. In re Van Alstine's Estate, 26 Utah, 193, 72 P. 942.

Direct line. See Descent.

DIRECT LOSS. One resulting immediately and proximately from the occurrence and not remotely from some of the consequences or effects thereof. Ermentrout v. Insurance Co., 63 Minn. 305, 65 N.W. 635, 30 L.R.A. 346, 56 Am.St.Rep. 481. See Loss.

DIRECT PAYMENT. One which is absolute and unconditional as to the time, amount, and the persons by whom and to whom it is to be made. People v. Boylan, C.C.Colo., 25 F. 595; Hurd v. McClellan, 14 Colo. 213, 23 P. 792.

As to direct "Consanguinity," "Contempt," "Damages," "Examination," "Interrogatories," "Tax," and "Trust," see those titles.

DIRECT TAX. One that is imposed directly upon property, according to its value. It is generally spoken of as a property tax or an ad valorem tax. City of De Land v. Florida Public Service Co., 161 So. 735, 739, 119 Fla. 804.

Under federal law. One that must be apportioned among the states according to population; a capitation tax, or a tax on real estate. Commonwealth of Pennsylvania ex rel. Schnader v. Fix, D.C.Pa., 9 F.Supp. 272, 276.

DIRECTION. The act of governing; management; superintendence. Denton v. Yazoo & M. V. R. Co., Miss., 284 U.S. 305, 52 S.Ct. 141, 142, 76 L.Ed. 310. Also the body of persons (called "directors") who are charged with the management and administration of a corporation or institution.

The charge or instruction given by the court to a jury upon a point of law arising or involved in the case, to be by them applied to the facts in evidence.

The clause of a bill in equity containing the address of the bill to the court.

That which is imposed by directing; a guiding or authoritative instruction; order; command. State ex rel. Johnson v. Tilley, 137 Neb. 173, 288 N. W. 521, 524; Hughes v. Van Bruggen, 44 N.M. 534, 105 P.2d 494, 496.

The line or course upon which anything is moving or aimed to move. Ruff v. Federal Tea Co., 129 Conn. 455, 29 A.2d 441, 442.

DIRECTLY. In a direct way without anything intervening; not by secondary, but by direct, means. Clark v. Warner, 85 Okl. 153, 204 P. 929, 934; Olsen v. Standard Oil Co., 188 Cal. 20, 204 P. 393, 396.

DIRECTOR OF THE MINT. An officer having the control, management, and superintendence of the United States mint and its branches. He is appointed by the president, by and with the advice and consent of the senate.

DIRECTOR. One who, or that which directs; as one who directs or regulates, guides or orders; a manager or superintendent, or a chief administrative official. State ex inf. McKittrick v. Bode, 342 Mo. 162, 113 S.W.2d 805, 808.

DIRECTORS. Persons appointed or elected according to law, authorized to manage and direct the affairs of a corporation or company. The whole of the directors collectively form the board of directors. Jones Min. Co. v. Cardiff Min. Co., 56 Utah, 449, 191 P. 426, 428.

DIRECTORY, *adj.* A provision in a statute, rule of procedure, or the like, which is a mere direction or instruction of no obligatory force, and involving no invalidating consequence for its disregard, as opposed to an imperative or mandatory provision, which must be followed. In re Opinion of the Justices, 124 Me. 453, 126 A. 354, 363. The general rule is that the prescriptions of a statute relating to the performance of a public duty are so far directory that, though neglect of them may be punishable, yet it does not affect the validity of the acts done under them, as in the case of a statute requiring an officer to prepare and deliver a document to another officer on or before a certain day. And see Pearse v. Morrice, 2 Adol. & El. 94; Nelms v. Vaughan, 84 Va. 696, 5 S.E. 704.

A "directory" provision in a statute is one, the observance of which is not necessary to the validity of the proceeding to which it relates; State v. Barnell, 109 Ohio St. 246, 142 N.E. 611, 613; one which leaves it optional with the department or officer to which it is addressed to obey or not as he may see fit; In re Thompson, 94 Neb. 658, 144 N.W. 243, 244.

Statutory requisitions are deemed "directory" only when they relate to some immaterial matter where a compliance is matter of convenience rather than of substance. This mode of getting rid of a statutory provision by calling it "directory" is not only unsatisfactory, on account of the vagueness of the rule itself, but it is the exercise of a dispensing power by the courts, which approaches so near legislative discretion that it ought to be resorted to with reluctance, only in extraordinary cases, where great public mischief would otherwise ensue, or important private interests demand the application of the rule. Ellis v. Tillman, 125 Miss. 678, 88 So. 281, 283.

Directory calls. Those which merely direct the neighborhood where the different calls may be found, whereas "locative calls" are those which serve to fix boundaries. Cates v. Reynolds, 143 Tenn. 667, 228 S.W. 695, 696.

Directory statute. Under a general classification, statutes are either "mandatory" or "directory," and, if mandatory, they prescribe, in addition to requiring the doing of the things specified, the result that will follow if they are not done, whereas, if directory, their terms are limited to what is required to be done. Hudgins v. Mooresville Consol. School Dist., 312 Mo. 1, 278 S.W. 769, 770. A statute is mandatory when the provision of the statute is the essence of the thing required to be done; otherwise, when it relates to form and manner, and where an act is incident, or after jurisdiction acquired, it is directory merely. State v. Kozer, 108 Or. 550, 217 P. 827, 832.

Directory trust. Where, by the terms of a trust, the fund is directed to be vested in a particular

manner till the period arrives at which it is to be appropriated, this is called a "directory trust." It is distinguished from a discretionary trust, in which the trustee has a discretion as to the management of the fund. Deaderick v. Cantrell, 10 Yerg. (Tenn.) 272, 31 Am.Dec. 576.

DIRECTORY, n. Book containing names, addresses, and occupations of inhabitants of city. Also any list or compilation, usually in book or pamphlet form, of persons, firms or corporations forming some class separate and distinct from others, *e. g.,* telephone directory, hotel directory, etc. American Travel & Hotel Directory Co. v. Gehring Publishing Co., D.C., 4 F.2d 415.

DIRIBITORES. In Roman law. Officers who distributed ballots to the people, to be used in voting. Tayl. Civil Law, 192.

DIRIMENT IMPEDIMENTS. In canon law. Absolute bars to marriage, which would make it null oh initio.

DIRT. Filth or excrement; garden loam; earth or soil, especially when loose; dust; garden earth. Highley v. Phillips, 176 Md. 463, 5 A.2d 824, 827.

DISABILITY. The want of legal capability to perform an act. Berkin v. Marsh, 18 Mont. 152, 44 Pac. 528, 56 Am.St.Rep. 565.

A crippled condition. Kimbrough v. National Protective Ins. Ass'n, 225 Mo.App. 913, 35 S.W.2d 654, 657.

At the present day, disability is generally used to indicate an incapacity for the full enjoyment of ordinary legal rights; thus married women, persons under age, insane persons, and felons convict are said to be under disability. Sometimes the term is used in a more limited sense, as when it signifies an impediment to marriage, or the restraints placed upon clergymen by reason of their spiritual avocations. Mozley & Whitley.

Classification

Disability is either *general* or *'special;* the former when it incapacitates the person for the performance of all legal acts of a general class, or giving to them their ordinary legal effect; the latter when it debars him from one specific act. State ex rel. Sathre v. Moodie, 258 N.W. 558, 567, 65 N.D. 340. Disability is also either *personal* or *absolute;* the former where it attaches to the particular person, and arises out of his *status,* his previous act, or his natural or juridical incapacity; State ex rel. Olson v. Langer, 65 N.D. 68, 256 N.W. 377; the latter where it originates with a particular person, but extends also to his descendants or successors. Lord de le Warre's Case, 6 Coke, la; Avegno v. Schmidt, 5 Sup.Ct. 487, 113 U.S. 293, 28 L.Ed. 976. Considered with special reference to the capacity to contract a marriage, disability is either *canonical* or *civil;* a disability of the former class makes the marriage voidable only, while the latter, in general, avoids it entirely. However, it has been held that, in the absence of statute, a court does not have jurisdiction to annul a marriage for a canonical disability. D. v. D., 2 Terry 263, 20 A.2d 139, 141. The term *civil* disability is also used as equivalent to *legal* disability, both these expressions meaning disabilities or disqualifications created by positive law, as distinguished from *physical* disabilities. Stieffel v. Valentine Sugars, 188 La. 1091, 179 So. 6, 15. A *physical* disability is a disability or incapacity caused by physical defect or infirmity, or bodily imperfection, or mental weakness or alienation; as,distinguished from *civil* disability, which relates to the civil *status* or condition of the person, and is imposed by the law.

Absence of competent physical, intellectual, or moral powers; impairment of earning capacity ; loss of physical function that reduces efficiency; inability to work. Rorabaugh v. Great Eastern Casualty Co., 117 Wash. 7, 200 P.2d 587, 590.

Temporary Disability

Temporary, as distinguished from permanent, disability is a condition that exists until the injured employee is as far restored as the permanent character of the injuries will permit. Consolidated Coal Co. of St. Louis v. Industrial Commission, 311 Ill. 61, 142 N.E. 498, 500.

Total Disability

Total disability to follow insured's usual occupation arises where he is incapacitated from performing any substantial part of his ordinary duties, though still able to perform a few minor duties and be present at his place of business. Fidelity & Casualty Co. of New York v. Bynum, 221 Ky. 450, 298 S.W. 1080, 1082. "Total disability" within an accident policy does not mean absolute physical disability to transact any business pertaining to insured's occupation, but disability from performing substantial and material duties connected with it. Jacobs v. Loyal Protective Ins. Co., 97 Vt. 516, 124 A. 848, 852; Brown v. Missouri State Life Ins. Co., 136 S.C. 90, 134 S.E. 224-225. The term may also apply to any impairment of mind or body rendering it impossible for insured to follow continuously a substantially gainful occupation without seriously impairing his health, the disability being permanent when of such nature as to render it reasonably certain to continue throughout the lifetime of insured. Starnes v. U. S., D.C.Tex., 13 F.2d 212, 213. See, also, Wholly Disabled.

DISABLE. Ordinarily, to take away the ability of, to render incapable of proper and effective action. Federal Union Life Ins. Co. of Cincinnati, Ohio v. Richey's Adm'x, 256 Ky. 262, 75 S.W.2d 767, 768.

In the old language of pleading, to disable is to take advantage of one's own or another's disability. Thus, it is "an express maxim of the common law that the party shall not disable himself;" but "this disability to disable himself * * * is personal." 4 Coke, 123b.

DISABLING STATUTES. These are acts of parliament, restraining and regulating the exercise of a right or the power of alienation; the term is specially applied to 1 Eliz. c. 19, and similar acts restraining the power of ecclesiastical corporations to make leases.

DISADVOCARE. To deny a thing.

DISAFFIRM. To repudiate; to revoke a consent once given; to recall an affirmance. To refuse one's subsequent sanction to a former act; to disclaim the intention of being bound by an antecedent transaction.

DISAFFIRMANCE. The repudiation of a former transaction. The refusal by one who has the legal power to refuse, (as in the case of a voidable contract,) to abide by his former acts, or accept the legal consequences of them. It may either be "express" (in words) or "implied" from acts inconsistent with a recognition of validity of former transaction. Ryan v. Morrison, 40 Okl. 49, 135 P. 1049, 1050.

DISAFFOREST. To restore to their former condition lands which have been turned into forests. To remove from the operation of the forest laws. 2 Bl.Comm. 416.

DISAGREEMENT. Difference of opinion or want of uniformity or concurrence of views; as, a disagreement among the members of a jury, among the judges of a court, or between arbitrators. Darnell v. Lyon, 85 Tex. 466, 22 S.W. 304.

In Real Property Law

The refusal by a grantee, lessee, etc., to accept an estate, lease, etc., made to him; the annulling of a thing that had essence before. No estate can be vested in a person against his will. Consequently no one can become a grantee, etc., without his *agreement.* The law implies such an agreement until the contrary is shown, but his disagreement renders the grant, etc., inoperative. Wharton.

DISALT. To disable a person.

DISALLOW. To refuse to allow, to deny the validity of, to disown or reject. Stewart v. Yellowtail, D.C.Mont., 35 F.Supp. 798, 799.

DISAPPROPRIATION. In ecclesiastical law. This is where the appropriation of a benefice is severed, either by the patron presenting a clerk or by the corporation which has the appropriation being dissolved. 1 Bl.Comm. 385.

DISAPPROVE. To pass unfavorable judgment upon; to refuse official approbation to; to disallow; to decline to sanction; to refuse to confirm, ratify or consent to. Stewart v. Yellowtail, D.C. Mont., 35 F.Supp. 798, 799.

DISASTER. A sudden and ruinous misfortune, hence, one who had been pronounced by eminent physicians to be afflicted with dementia praecox, who had nervous breakdown, and who was without funds or ability to earn them by either mental or physical exertion, was overtaken by disaster. Robison v. Elston Bank & Trust Co., 113 Ind.App. 633, 48 N.E.2d 181, 188.

DISAVOW. To repudiate the unauthorized acts of an agent; to deny the authority by which he assumed to act.

DISBAR. In England, to deprive a barrister permanently of the privileges of his position; it is analogous to striking an attorney off the rolls. In America, the word describes the act of a court in rescinding an attorney's license to practice at its bar. Gresham v. Superior Court of Los Angeles County, 44 Cal.App.2d 664, 112 Pd 965, 967.

DISBOCATIO. In old English law. A conversion of wood grounds into arable or pasture; an assarting. Cowell. See Assart.

DISBURSEMENTS. Money paid out or expended for which one is entitled to a credit upon rendering an account of his doings. Tinkler v. Powell, 23 Wyo. 352, 151 P. 1097, 1098.

The term is also used under the codes of civil procedure, to designate the expenditures necessarily made by a party in the progress of an action, aside from the fees of officers and court costs, which are allowed, *eo nomine,* together with costs. Fertilizer Co. v. Glenn, 48 S.C. 494, 26 S.E. 796; Sasser v. Stuyvesant Ins. Co., 258 App.Div. 340, 16 N.Y.S.2d 401, 402, 403.

DISCARCARE. In old English law. To discharge, to unload; as a vessel. *Carcare et discarcare;* to charge and discharge; to load and unload. Cowell.

DISCARGARE. In old European law. To discharge or unload, as a wagon. Spelman.

DISCEPTIO CAUSE. In Roman law. The argument of a cause by the counsel on both sides. Calvin.

DISCHARGE. To release, Clark v. Sperry, 125 W.Va. 718, 25 S.E.2d 870, 872; liberate, People ex rel. La Velle v. Trophagen, 236 N.Y.S. 214, 216, 134 Misc. 604; annul, Glaser v. Haskin, 140 Or. 392, 13 P.2d 1071, 1074; unburden; disincumber; dismiss, The Losmar, D.C.Md., 20 F.Supp. 887, 891; extinguish an obligation, Mazur v. Stein, 314 Ill. App. 529, 41 N.E.2d 979, 981; remove from employment, Bourne v. Board of Education of City of Roswell, 46 N.M. 310, 128 P.2d 733, 735.

In the Law of Contracts

To cancel or unloose the obligation of a contract; to make an agreement or contract null and inoperative. As a noun, the word means the act or instrument by which the binding force of a contract is terminated, irrespective of whether the contract is carried out to the full extent contemplated (in which case the discharge is the result of *performance)* or is broken off before complete execution. Rivers v. Blom, 163 Mo. 442, 63 S.W. 812.

Discharge is a generic term; its principal species are rescission, release, accord and satisfaction, performance, judgment, composition, bankruptcy, merger *(q. v.)* . Leake, Cont. 413.

As applied to demands, claims, rights of action, incumbrances, etc., to discharge the debt or claim is to extinguish it, to annul its obligatory force, to satisfy it. And here also the term is generic; thus a debt, a mortgage, a legacy, may be dis-

charged by payment or performance, or by any act short of that, lawful in itself, which the creditor accepts as sufficient. Blackwood v. Brown, 29 Mich. 484; Rangely v. Spring; 28 Me. 151. To discharge a person is to liberate him from the binding force of an obligation, debt, or claim.

There is a distinction between a "debt discharged" and a "debt paid." When discharged the debt still exists though divested of its character as a legal obligation during the operation of the discharge. Something of the original vitality of the debt continues to exist which may be transferred, even though the transferee takes it subject to its disability incident to the discharge. The fact that it carries something which may be a consideration for a new promise to pay, so as to make an otherwise worthless promise a legal obligation, makes it the subject of transfer by assignment. Stanek v. White, 172 Minn. 390, 215 N.W. 784.

Discharge by operation of law is where the discharge takes place, whether it was intended by the parties or not; thus, if a creditor appoints his debtor his executor, the debt is discharged by operation of law, because the executor cannot have an action against himself. Co. Litt. 264b, note 1; Williams, Ex'rs, 1216; Chit.Cont. 714.

In Bankruptcy Practice

The discharge of the bankrupt is the step which regularly follows the adjudication of bankruptcy and the administration of his estate. By it he is released from the obligation of all his debts which were or might be proved in the proceedings, so that they are no longer a charge upon him, and so that he may thereafter engage in business and acquire property without its being liable for the satisfaction of such former debts. Pitcairn v. Scully, 252 Pa. 82, 97 A. 120, 121.

In Civil Practice

To discharge a rule, an order, an injunction, a certificate, process of execution, or in general any proceeding in a court, is to cancel or annul it, or to revoke it, or to refuse to confirm its original provisional force. Nichols v. Chittenden, 14 Colo. App. 49, 59 P. 954.

To discharge a jury is to relieve them from any further consideration of a cause. This is done when the continuance of the trial is, by any cause, rendered impossible; also when the jury, after deliberation, cannot agree on a verdict.

In Criminal Practice

The act by which a person in confinement, held on an accusation of some crime or misdemeanor, is set at liberty. The writing containing the order for his being so set at liberty is also called a "discharge." In re Eddinger, 236 Mich. 668, 211 N.W. 54.

In Equity Practice

In the process of accounting before a master in chancery, the *discharge* is a statement of expenses and counter-claims brought in and filed, by way of set-off, by the accounting defendant; which follows the *charge* in order.

In Maritime Law

The unlading or unlivery of a cargo from a vessel. The Bird of Paradise v. Heyneman, 5 Wall. 557, 18 L.Ed. 662.

In Military Law

The release or dismissal of a soldier, sailor, or marine, from further military service, either at the expiration of his term of enlistment, or previous thereto on special application therefor, or as a punishment. An "honorable" discharge is one granted at the end of an enlistment and accompanied by an official certificate of good conduct during the service. A "dishonorable" discharge is a dismissal from the service for bad conduct or as a punishment imposed by sentence of a court-martial for offenses against the military law. There is also in occasional use a form of "discharge without honor," which implies censure, but is not in itself a punishment. U. S. v. Sweet, 23 S.Ct. 638, 189 U.S. 471, 47 L.Ed. 907.

A *discharge from the* army is the discharge given one who was actually in military service, as distinguished from a mere discharge from draft. Patterson v. Lamb, App.D.C., 67 S.Ct. 448, 329 U.S. 539, 91 L.Ed. 485.

A *discharge from draft* is the discharge given selectees who reported for military service in World War I and were rejected at camp after induction for unfitness, dependency and the like. Thus a selectee who reported on November 11, 1918 but was told that draft call was cancelled because of the armistice was properly given a discharge from draft, rather than a discharge from the army and could not claim veterans' rights. Patterson v. Lamb, App.D.C., 67 S.Ct. 448, 329 U.S. 539, 91 L.Ed. 485.

DISCIPLINE. Instruction, comprehending the communication of knowledge and training to observe and act in accordance with rules and orders. In re Swenson, 183 Minn. 602, 237 N.W. 589.

Correction, chastisement, punishment, penalty. Rules and regulations. Reutkemeier v. Nolte, 179 Iowa, 342, 161 N.W. 290, 292, L.R.A.1917D, 273.

DISCLAIMER. The repudiation or renunciation of a claim or power vested in a person or which he had formerly alleged to be his. The refusal, or rejection of an estate or right offered to a person. The disavowal, denial, or renunciation of an interest, right, or property imputed to a person or alleged to be his. Also the declaration, or the instrument, by which such disclaimer is published. Moores v. Clackamas County, 40 Or. 536, 67 P. 662.

Of Estate

The act by which a party refuses to accept an estate which has been conveyed to him. Thus, a trustee who releases to his fellow-trustees his estate, and relieves himself of the trust, is said to disclaim. Kentucky Union Co. v. Cornett, 112 Ky. 677, 66 S.W. 728.

A renunciation or a denial by a tenant of his landlord's title, either by refusing to pay rent, denying any obligation to pay, or by setting up a title in himself or a third person, and this is a distinct ground of forfeiture of the lease or other tenancy, whether of land or tithe. See 16 Ch. Div. 730.

In Patent Law

When the title and specifications of a patent do not agree, or when part of that which it covers is not strictly patentable, because neither new nor useful, the patentee is empowered, with leave of the court, to enter a disclaimer of any part of